



THE UNNECESSARY RISKS OF MANDATED AND RUSHED VOTE-BY-MAIL

By Jason Snead

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COVID-19 presents serious challenges to the smooth, efficient, and secure operations of our elections. Fortunately, states are already demonstrating the ability to respond, including by expanding absentee voting options and developing contingencies for safe in-person voting alternatives. Data collected after the April election in Wisconsin demonstrates that elections can be held without risking a viral spike.¹ Despite this, some politicians and advocacy groups are doubling down on an unprecedented effort to fundamentally transform American elections. Through litigation and legislation, they are working to advance what can be termed a “mandated vote-by-mail agenda” that seeks to transmit ballots to every voter registration—even inactive and outdated ones—wipe away key election safeguards, and legalize the practice of vote harvesting. This agenda has little to do with responding to the virus; rather, it is about seizing an opportunity to push longstanding political objectives that were hotly debated and unwise in better times. In the midst of a crisis, mere months ahead of a presidential election, adopting this “mandated vote-by-mail agenda” constitutes a naked invitation to voter confusion, chaos, and fraud.

The Honest Elections Project supports efforts by state and local governments to implement and expand the use of absentee voting during the pandemic. But these changes must be adopted in a planned, rational manner protected with appropriate election integrity measures.

Vote-By-Mail, Explained

Liberal advocates and politicians describe their vote-by-mail agenda as a response to the pandemic, and present it as is little more than expanding tried-and-true absentee voting. The actual policy proposals they put forward in legislation like the House Democrats’ HEROES Act are much more expansive; indeed, they are a far cry from what Americans today would recognize as absentee voting.

Absentee voters usually must first request a ballot; this action allows officials to double-check the accuracy of their voter rolls, and spares states the expense of printing and mailing a ballot which a voter has no intention of returning.² Furthermore, absentee balloting generally includes at least one method of verifying that the person casting the vote is the proper voter. The most common approach is signature matching, in which the voter’s signature is compared to one on file. Several states also require voters to obtain witness signatures, notarize their ballots, or provide a photocopy of an ID, or a driver’s license or social security number.³ Many states also limit or ban organized efforts by third parties to collect ballots from voters, be they political activists, campaign workers, or candidates—a process known as “vote harvesting.” States do this out of concern that such tactics create unnecessary

¹ Kathy Leung, Joseph Wu, Kuang Xu, Lawrence Wein, *No Detectable Surge in SARS-CoV-2 Transmission Due to the April 7, 2020 Wisconsin Election*, MEDRXIV (Apr. 29, 2020), <https://www.medrxiv.org/content/10.1101/2020.04.24.20078345v1>.

² Six states and the District of Columbia permit voters to place their names on a permanent absentee list. Hans von Spakovsky, *Vote Harvesting: A Recipe for Intimidation, Coercion, and Election Fraud*, Heritage Foundation Legal Memorandum No. 253, Oct. 8, 2019, https://www.heritage.org/sites/default/files/2019-10/LM253_0.pdf.

³ *Verification of Absentee Ballots*, National Conference of State Legislatures, Jan. 21, 2020, <https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>.



opportunities for ballot tampering, voter intimidation, and violations of ballot secrecy.⁴

The “Mandated Vote-By-Mail Agenda”:

The push for vote-by-mail entails two main efforts. The first is legislative, and it features several core elements:⁵

- Automatically mail ballots to every registration for the 2020 election;
- Legalize vote harvesting;
- Eliminate or undermine voter ID laws;
- Expand mail-in and early voting in all subsequent elections;
- Federalize significant portions of election administration.

These legislative ambitions amount to a top-to-bottom overhaul of the voting process. The notion that Congress could mandate an all-mail election, or micro-manage the regulation of elections to the degree envisioned for this November and without years of lead time, is highly dubious from both a constitutional and a practical perspective.⁶

The second is litigation. Liberal groups and their allies have launched dozens of lawsuits in politically important states ahead of the 2020 election, using the threat of COVID-19 to argue that courts should invalidate a host of duly enacted state election laws.⁷ The objectives of this unprecedented wave of lawsuits, unsurprisingly, mirror those of the House Democrats’ legislative proposals: to require that ballots be mailed to all voters, to invalidate standard absentee voting laws like signature matching and witness requirements, to legalize vote harvesting, and to eliminate absentee “excuse” requirements.⁸ Many of these lawsuits seek permanent injunctive relief, meaning that, like the HEROES Act, changes ostensibly justified by a temporary emergency would be made permanent.⁹ Fortunately, these lawsuits have thus far enjoyed only limited success in court.

⁴ von Spakovsky, *supra* note 2.

⁵ See, for example, the HEROES Act, H.R. 6800.

⁶ For example, states required years to implement the Help America Vote Act’s requirement to implement a computerized statewide voter registration database. The 2002 law gave states an initial deadline of January 1, 2004, with the option for a further two-year extension for good cause. 52 U.S.C. § 21083. 41 states failed to complete the work by the original deadline. *Nine States’ Experiences Implementing Federal Requirements for Computerized Statewide Voter Registration Lists*, GAO (Feb. 2006), <https://www.gao.gov/new.items/d06247.pdf>.

⁷ For a list of ongoing COVID-19-related election litigation, see, *Relevant Litigation*, Ballotpedia, [https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020#Relevant_litigation](https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020#Relevant_litigation).

⁸ This is by no means the extent of the demands featured in liberal and Democratic lawsuits. These cases have also challenged voter ID laws, absentee ballot receipt deadlines, postage requirements, and age limits, and signature-gathering requirements for ballot initiatives, among others.

⁹ This paper does not go in-depth into the deficiencies of the legal and Constitutional arguments presented in these lawsuits, but the Honest Elections Project has filed numerous amicus briefs arguing the point in state and federal cases. These briefs may be viewed at www.honestelections.org.

Crisis Politics

Nothing about this pandemic “response” is actually about responding to the current crisis. Liberals sought these policy changes long before COVID-19, and they will continue to do so long after the crisis subsides.¹⁰

The Many Problems of Vote-By-Mail

If, tomorrow, proponents were to succeed in imposing a mandatory vote-by-mail agenda on the nation—or even in just a few key battleground states—ahead of the 2020 election, the risk for electoral chaos in November would rise dramatically. Put simply, changing the rules of the election mid-stream, automatically mailing ballots, eliminating voter verification measures, and legalizing vote harvesting are a recipe for widespread logistical challenges, voter confusion, and potential fraud.

Changing the Rules

Vote-by-mail proponents are rushing to courts and to Congress to win last-minute and sweeping changes to voting practices. Voters should be wary. Consider the U.S. Supreme Court’s take on the matter. The Court has long held that eleventh-hour judicial rewrites of state election laws should be avoided. Why? Because of the grave risk of causing chaos and confusion among voters and election officials alike.¹¹ That scenario played out recently in Wisconsin, where the Democratic Party challenged several state election laws and prompted a legal fight that was not resolved until the night before the election, leading to widespread uncertainty about what rules were in effect.¹²

What is true for courts is true for policymakers, as well. Elections are complex systems; even minor changes (by comparison to the sweeping ambitions of vote-by-mail), planned in advance, can cause significant unintended consequences. Consider two examples from the current election cycle:

- Same-Day Registration in Michigan: This year marked the first time that Michiganders could register to vote at the polls on election day and request a no-excuse absentee ballot. The reform appears to have had an inadvertent side effect: Voters were confronted with lengthy waits in line during the state’s presidential primary, which reportedly resulted from the fact that poll workers were ill-equipped to process the influx of registrations and absentee ballots in addition to the normal flow of registered voters.¹³

¹⁰ Former Attorney General Eric Holder told Time Magazine, “Coronavirus gives us an opportunity to revamp our electoral system...these are changes that we should make permanent because it will enhance our democracy.” *Eric Holder: Here’s How the Coronavirus Crisis Should Change U.S. Elections—For Good*, TIME (Apr. 14, 2020), <https://time.com/5820622/elections-coronavirus-eric-holder/>.

¹¹ See, *Purcell v. Gonzalez*, 549 U.S. 1 (2006)

¹² Alexa Corse and Jess Bravin, *Wisconsin Vote to Proceed After Conservative Courts Block Steps to Extend Balloting*, WSJ (Apr. 7, 2020), <https://www.wsj.com/articles/wisconsin-governor-suspends-in-person-voting-for-tuesday-election-11586196408>.

¹³ Beth LeBlanc, *Long Lines, Hour-Long Waits Prompt Criticism at Michigan Polls*, Detroit News (Mar. 10, 2020), <https://www.detroitnews.com/story/news/politics/2020/03/10/michigan-localities-juggling-rise-same-day-voter-registration/5004002002/>.

- Iowa Caucus App: The Iowa Democratic Caucus devolved into chaos after an app intended to perform a modest role in the process—reporting caucus results—failed on election night. Results were delayed for days.¹⁴

The Iowa Caucus incident, in particular, is instructive. Post-election analysis concluded that the app failed in large measure due to inadequate development, testing, and training.¹⁵ In pushing to reshape elections in the middle of a cycle, with no advance planning, a very tight timeline, amidst public health responses to a pandemic, vote-by-mail advocates are asking for a repeat of Iowa’s caucus chaos. Enacting vote-by-mail ahead of the November election would require the procurement, training, and implementation of extensive new voting systems to track and count absentee ballots (which may not even be available in time); indeed, the HEROES Act includes specific mandates about what equipment states must adopt and what types of ballots they must use. These systems would have to be tested, staff must be trained, and voters must be educated on new voting procedures—all in a matter of months.

Vote-by-mail advocates frequently point out that five states have already adopted all-mail elections.¹⁶ But Washington Secretary of State Kim Wyman, in an interview with the *The New York Times*, explained that “you can’t just flip a switch.”¹⁷ Per Wyman, Washington State spent more than a decade gradually expanding the use of absentee voting, followed by a concerted five-year effort to move to an all-mail election.¹⁸ For states that historically see only low levels of absentee voting, there is little chance of implementing a mandatory vote-by-mail agenda by November. Even for states with more significant absentee voting, the odds of such an overhaul working well on the first attempt are low. Advocates point to an infusion of \$3.6 billion in the HEROES Act they claim would expedite the process, but throwing money at a problem only goes so far—and it cannot buy one critical resource: time.

Mailing Ballots Automatically: A Recipe for Waste, Confusion, and Fraud

One major component of the mandatory vote-by-mail effort is to compel the automatic mailing of ballots to all voter registrations, including inactive ones—something that even the five all-mail states do not do.¹⁹ If ballots are mailed automatically to every registration on file, a significant volume of ballots will inevitably be mailed to the wrong address, to voters who are deceased, and to people who are ineligible to vote—possibly measured in the millions if done on a national scale.²⁰ This is not a hypothetical concern; multiple states are reporting large numbers of unclaimed and undeliverable

¹⁴ Shane Goldmacher and Nick Corasaniti, *A Systemwide Disaster’: How the Iowa Caucuses Melted Down*, New York Times (Feb. 4, 2020), <https://www.nytimes.com/2020/02/04/us/politics/what-happened-iowa-caucuses.html>.

¹⁵ *Id.*

¹⁶ Colorado, Hawaii, Oregon, Utah, and Washington. This list does not include states, such as California, which have, or may yet, adopt all-mail elections in November due to COVID-19. And it is worth noting that even today’s vote-by-mail states incorporate ballot protection and voter verification laws of the type currently being challenged in court in other states.

¹⁷ Lisa Lerer, *Washington: Where Everyone Votes by Mail*, The New York Times (Apr. 15, 2020), <https://www.nytimes.com/2020/04/15/us/politics/washington-where-everyone-votes-by-mail.html>.

¹⁸ *Id.*

¹⁹ The law in these states limits ballot mailings to active voters. Colo. Rev. Stat. § 1-7.5-107(3)(a)(I); Haw. Rev. Stat. § 11-102(b); Ore. Rev. Stat. § 254.470; Utah Code § 20A-3-302(2)(b)(i); Rev. Code of Wash. § 29A.40.010.

²⁰ According to the U.S. Election Assistance Commission, in 2018, 543,260 absentee ballots were returned undeliverable. That figure would be expected to rise considerably in a vote-by-mail election. *EAC 2018 Data Visualization Tool*, https://public.tableau.com/profile/u.s.election.assistance.commission#!/vizhome/EAVS2018DataViz-Labeld_11_25/EACDataVizTool.

ballots:

- Nevada: After the Democratic Party sued to compel Nevada to automatically mail primary ballots to its inactive registrants—that is, voters whom the state believes have moved away—Clark County agreed to do so. Reports immediately emerged of postal workers leaving behind large numbers of mail ballots at apartment buildings or dumped in trash cans because the addresses were incorrect and delivery could not be completed.²¹ One postal worker even reported receiving a ballot for her deceased mother.²²
- New Jersey: A strikingly similar situation was reported in Paterson, New Jersey, in which mail ballots were reported to have been left behind en masse, again because delivery could not be completed due to inaccurate voter registrations.²³
- Maryland: Reports out of Baltimore found that roughly 10 percent of ballots were undeliverable during the by-mail special election to replace the late Rep. Elijah Cummings.²⁴

Why is this happening? America’s voter rolls are beset with inaccuracies. The problem is widely recognized, but many states make little effort to remove invalid registrations, even though federal law requires states to maintain accurate voter registration rolls.²⁵ Those states that do initiate list maintenance actions face litigation and public attacks from activists and politicians who are intent on stymying these efforts.²⁶ There are several sources for these invalid registrations.

- “Deadwood”: The 2005 Commission on Federal Election Reform (the “Carter-Baker Commission”), co-chaired by former President Jimmy Carter and former Secretary of State James Baker, noted that the nation’s voter rolls contain significant numbers of registrations representing voters who have died, moved away, or been disqualified by felony conviction.²⁷ The Pew Center on the States concluded in 2012 that 24 million voter registrations—one in eight nationwide—“are no longer valid or are significantly inaccurate,” including 2.75 million duplicate

²¹ Andrew O’Reilly, *Nevada’s Vote-By-Mail Primary Stirs Fraud Concerns, As Unclaimed Ballots Pile Up: ‘Something Stinks Here,’*, Fox News (May 14, 2020), <https://www.foxnews.com/politics/nevadas-vote-by-mail-primary-fraud-concerns>.

²² Rory Appleton, *Primary Underway, But Argument Over Mail Election Continues*, Las Vegas Review-Journal (May 19, 2020), <https://www.reviewjournal.com/news/politics-and-government/primary-underway-but-argument-over-mail-election-continues-2031301/>.

²³ <https://www.northjersey.com/story/news/paterson-press/2020/05/18/paterson-nj-election-investigation-started-months-ago/5214781002/>; Jonathan Dienst, *Close Results In Paterson Vote Plagued By Fraud Claims; Over 3K Ballots Seemingly Set Aside*, NBC New York (May 20, 2020), <https://www.nbcnewyork.com/news/local/close-results-in-paterson-vote-plagued-by-fraud-claims-over-3k-ballots-seemingly-set-aside/2425813/>.

²⁴ Emily Opilo, *About 1 in 10 Ballots Went Undelivered to Baltimore City Voters During 7th Congressional District Special Election*, Baltimore Sun (May 13, 2020), <https://www.baltimoresun.com/politics/bs-md-pol-ballots-undeliverable-baltimore-voters-20200513-qw6rllrv3bdbjm2xup4d3td5aq-story.html>.

²⁵ See, Section 8 of the National Voter Registration Act, 52 U.S.C. § 20501(b)(4).

²⁶ Wisconsin election officials arbitrarily decided to halt the removal of roughly 200,000 outdated registrations, prompting a lawsuit from the Wisconsin Institute of Law and Liberty now pending before the state Supreme Court. By contrast, Ohio devised a routine and ongoing list maintenance program, but was forced to fight a lawsuit intended to halt that effort all the way to the U.S. Supreme Court, where it prevailed. Georgia is a frequent target of lawsuits and public criticisms of its efforts to remove old registrations from its rolls.

²⁷ *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform*, American University, Sept. 2005, at 22.

registrations and 1.8 million dead voters who remained on the rolls.²⁸ This study was relied upon by the U.S. Supreme Court in its opinion affirming the legality of Ohio’s voter list maintenance efforts.²⁹ In 2019, Los Angeles County and California settled a lawsuit and the county began removing 1.5 million inactive registrations—more than one in five of all LA registrations—something which neither jurisdiction had apparently done for 20 years.³⁰ The Honest Elections Project has identified dozens of counties in just four states with significantly inflated voter rolls, including many that claim voter registrations rates above 100%.³¹

- **Voter Registration Fraud:** Some of these bad voter registrations are entirely fraudulent. In 2017 Andrew Spieles pleaded guilty in Virginia to falsifying voter registrations, and Tomika Curgil pleaded guilty to the same conduct in Florida.³² Both were working for voter registration drives when they committed their fraud. In February 2020, Norman Hall pleaded guilty for taking part in a scheme to give homeless people in Los Angeles’s Skid Row cigarettes and as little as \$1 to sign false voter registration and ballot petition documents. Hall and his conspirators generated hundreds of fraudulent petitions and voter registrations in 2016 and 2018.³³ Others falsify voter registrations so they can vote in a particular race or run for a particular office. Christina Ayala, a former Connecticut state representative, voted in multiple elections in various districts where she did not live, and falsified evidence to hide her illegal conduct.³⁴ Real estate developer Shalom Lamm orchestrated a conspiracy to falsely register nonresidents as voters in Bloomingburg, New York, in order to elect officials friendly to his real estate development project.³⁵
- **Ineligible Voters:** Noncitizens can and do become registered to vote. Illinois recently acknowledged that its automatic voter registration system registered hundreds of people who are not citizens, and that some of them voted in 2018, including in tight races.³⁶ Some states

²⁸ *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade*, Pew Center for the States, Feb. 2012, https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pew_assets/2012/pewupgradingvoterregistrationpdf.pdf, at 1.

²⁹ *Husted v. A. Philip Randolph Institute*, 584 US __ (2018).

³⁰ *California and Los Angeles County to Remove 1.5 Million Inactive Voters from Voter Rolls—Settle Judicial Watch Federal Lawsuit*, Judicial Watch (Jan. 3, 2019), <https://www.judicialwatch.org/press-releases/california-and-los-angeles-county-to-remove-1-5-million-inactive-voters-from-voter-rolls-settle-judicial-watch-federal-lawsuit/>.

³¹ *NORTH CAROLINA ELECTION OFFICIALS HAVE BEEN PUT ON NOTICE: CLEAN UP VOTER ROLLS OR FACE LAWSUITS*, Honest Elections Project (May 5, 2020), <https://www.honestelections.org/north-carolina-election-officials-have-been-put-on-notice-clean-up-voter-rolls-or-face-lawsuits/>; *Voters in Colorado, Florida and Michigan Serve Notice to State Officials*, Honest Elections Project (Feb. 27, 2020), <https://www.honestelections.org/pr1/>.

³² Emily Akiyama, *Former JMU Student Sentenced to 100 Days in Voter Fraud Case*, WHSV (Aug. 8, 2017), <https://www.wHSV.com/content/news/Harrisonburg-voter-fraud-suspect-in-court-429747003.html>; David Smiley and Monique Madan, *Women Charged with Elections Fraud Led Unassuming Lives*, Miami Herald (Oct. 28, 2016), <https://www.miamiherald.com/news/local/community/miami-dade/article111213742.html>.

³³ Andrew Blankstein and Phil Helsel, *Man Gets 1 Year in Los Angeles Skid Row Voter Fraud Scheme*, NBC (Feb. 19, 2020), <https://www.nbcnews.com/news/us-news/man-gets-1-year-los-angeles-skid-row-voter-fraud-n1139221>.

³⁴ Daniel Tepfer, *Ayala Gets Suspended Sentence for Election Fraud*, CTPost (Sep. 26, 2015), <https://www.ctpost.com/news/article/Ayala-gets-suspended-sentence-for-election-fraud-6529496.php>.

³⁵ *Shalom Lamm Pleads Guilty In White Plains Federal Court To Conspiracy To Corrupt The Electoral Process In Bloomingburg*, U.S. Attorney’s Office, S.D.N.Y., Jun. 6, 2017, <https://www.justice.gov/usao-sdny/pr/shalom-lamm-pleads-guilty-white-plains-federal-court-conspiracy-corrupt-electoral>.

³⁶ Mark Maxwell, *State Board of Elections admits non-U.S. citizens may have voted illegally in 2018*, WCIA (Jan. 20, 2020), <https://www.wcia.com/illinois-capitol-news/state-board-of-elections-admits-non-u-s-citizens-may-have-voted-illegally-in-2018/>.

also fail to remove convicted felons from the rolls. Between 2008 and 2011, for instance, more than a hundred felons were convicted of illegally voting in Minnesota.³⁷

At the very least, mailing ballots to every registration on file—knowing that a significant number of registrations are erroneous or outdated—is a waste of precious resources. Clark County, Nevada, estimated it would cost at least \$323,000 to mail ballots to inactive registrants. Now, undeliverable ballots are being dumped in garbage cans.³⁸ Taxpayers' dollars are literally being thrown away because of ill-conceived vote-by-mail schemes.

Why We Need Voter Verification Laws

In 2005, the Carter-Baker Commission concluded that vote-by-mail is “likely to increase the risks of fraud and of contested elections...where there is some history of troubled elections, or where the safeguards for ballot integrity are weaker.”³⁹ It is easy to see why. Mail-in voting is inherently less secure than voting in person. The voting process takes place away from the secure and monitored environment of a polling place, election officials do not control the chain of custody for ballots, and absentee votes can be inadvertently lost, or nefariously intercepted, tampered with, or destroyed, without the knowledge of voters or officials.⁴⁰ As a consequence, mail-in votes are particularly susceptible to fraud. And this election cycle presents an alarming new prospect: what easier vector for voter fraud could there be than piles of ballots simply lying about, unclaimed and unattended?

One might wish to believe that nobody would take advantage of such a situation, but history shows that people do:

- **Dead Voters:** Toni Lee Newbill twice cast votes in the name of her deceased father, once in 2013 and again in Colorado's 2016 Republican primary.⁴¹ Richard Douglas Dohmen, of Virginia, cast a vote for his late wife in the 2018 election.⁴²
- **Duplicate Voting:** In recent years, a number of people have been convicted of voting twice in the same election. For instance, Christopher Billups cast ballots in both Washington State and Idaho in the 2016 presidential election.⁴³ In 2015, Pasco Parker pleaded guilty to voting in three states in the 2012 election—in person in Tennessee, and by absentee vote in Florida and North Carolina.⁴⁴ In Ohio, poll worker Melowese Richardson voted twice in the 2012 election, and cast

³⁷ See, The Heritage Voter Fraud Database, www.heritage.org/voterfraud.

³⁸ Rory Appleton, *Primary Underway, But Argument Over Mail Election Continues*, Las Vegas Review-Journal (May 19, 2020), <https://www.reviewjournal.com/news/politics-and-government/primary-underway-but-argument-over-mail-election-continues-2031301/>.

³⁹ Federal Election Reform, *supra* note 27, at 35.

⁴⁰ See, Don Palmer, *Absentee and Mail Ballots in America: Improving the Integrity of the Absentee and Mail Balloting*, Lawyers Democracy Fund.

⁴¹ Chhun Sun, *Golden Woman Pleads Guilty to Voting Twice for Deceased Father*, The Gazette, https://gazette.com/crime/golden-woman-pleads-guilty-to-voting-twice-for-deceased-father/article_0e852f84-0809-51be-8235-9d464d315257.html.

⁴² See, The Heritage Foundation Election Fraud Database, entry: Richard Douglas Dohmen, www.heritage.org/voterfraud.

⁴³ *Lapwai Man Ordered to Pay Fine In Voter Fraud*, Lewiston Tribune (May 17, 2017), https://lmtribune.com/northwest/lapwai-man-ordered-to-pay-fine-in-voter-fraud/article_c006bd6c-3686-512b-898b-b6e7d95bf5c1.html.

⁴⁴ See, The Heritage Foundation Election Fraud Database, entry: Pasco Parker, www.heritage.org/voterfraud.



votes in the names of other people in three elections.⁴⁵

- Ineligible Voting: Gustavo Lerma, a noncitizen, took on the identity of a deceased American and voted for years as a Republican before being caught and convicted in 2019.⁴⁶ In 2018, federal prosecutors in North Carolina prosecuted 19 noncitizens for voting in U.S. elections.⁴⁷

Too often, the people abusing absentee voting vulnerabilities are political candidates and campaigns. The tactics they use can range from outright theft of ballots, to bribery and vote buying operations—all designed to steal elections and disenfranchise whole communities.

- Miami Mayoral Race: The 1997 Miami mayoral race was ultimately overturned by a judge after a sweeping investigation revealed widespread absentee ballot fraud. In all, 5,000 absentee ballots were invalidated, and three dozen people were arrested in connection with the conspiracy.⁴⁸
- Missouri 78th House District: Penny Hubbard, the incumbent representative for Missouri's 78th House District, won her 2016 Democratic primary by a mere 90 votes. When Bruce Franks Jr., her opponent for the Democratic nomination, contested the results, it became clear that Hubbard had won thanks to a lopsided absentee vote tally that heavily favored her. After a judge ruled that enough improper absentee votes had been cast to affect the outcome, a new election was held and Franks trounced Hubbard in the rematch, winning by 1,500 votes.⁴⁹
- Dothan, AL: Olivia Lee Reynolds was convicted on 24 voter fraud charges. She filled out voters' ballots as part of her boyfriend Amos Newsome's campaign, and on election day, Newsome lost the in-person vote but won 96% of the absentee vote. Newsome carried the race by 14 votes.⁵⁰
- Bronx, NY: While running for the New York State Assembly in 2014, Hector Ramirez and his campaign tricked voters into giving him their ballots. He filled out at least 35 of them for himself, and won his race. A recount later deprived him of his victory by two votes, and he pleaded guilty to fraud charges.⁵¹

Many elections are closely decided, with margins of only a few votes. In these tight contests, it only requires a small handful of illegal ballots—possibly even just one—to determine the outcome. Quite sensibly, states have adopted a variety of tools to detect, deter, and thwart fraud, whether committed in-person or absentee. In the mail voting context, signature verification, witness or notary requirements and, in some states, photo identification laws are all applied to absentee ballots to ensure they are

⁴⁵ See, The Heritage Foundation Election Fraud Database, entry: Melowese Richardson, www.heritage.org/voterfraud.

⁴⁶ Jason Snead, *More Proof That Voter Fraud Is Real, and Bipartisan*, Daily Signal (Aug. 27, 2019), <https://www.dailysignal.com/2019/08/27/more-proof-that-voter-fraud-is-real-and-bipartisan/>.

⁴⁷ *Nineteen Foreign Nationals Charged for Voting in 2016 Election*, U.S. Attorney's Office, Eastern District of North Carolina (Aug. 24, 2018), <https://www.justice.gov/usao-ednc/pr/nineteen-foreign-nationals-charged-voting-2016-election>.

⁴⁸ *18 Are Arrested in 1997 Miami Ballot Fraud*, New York Times (Oct. 29, 1998), <https://www.nytimes.com/1998/10/29/us/18-are-arrested-in-1997-miami-ballot-fraud.html>; *Judge Tosses Out Miami Election*, AP (Mar. 4, 1998), <https://www.cbsnews.com/news/judge-tosses-out-miami-election/>.

⁴⁹ Mariah Stewart and Chris King, *'Thundering victory' for Bruce Franks Jr. over Hubbard in special election*, St. Louis American, Sep. 16, 2016, http://www.stlamerican.com/news/local_news/thundering-victory-for-bruce-franks-jr-over-hubbard-in-special/article_84c00c8e-7c84-11e6-a277-574dae3ded38.html.

⁵⁰ See, The Heritage Foundation Election Fraud Database, entry: Olivia Lee Reynolds, www.heritage.org/voterfraud.

⁵¹ See, The Heritage Foundation Election Fraud Database, entry: Hector Ramirez, www.heritage.org/voterfraud.



being cast by a valid voter. Many states also limit the use of absentee voting by requiring voters under 65 to have an acceptable excuse to vote absentee, thus ensuring that most voters use more secure in-person voting options.

These laws have succeeded in detecting and thwarting major vote-fraud scandals in the past, including one that is only just beginning to unfold:

- Paterson, NJ: One in five votes cast in a 2020 mail-in city election have already been disqualified. Some 800 ballots were discovered illegally bundled—evidence of vote harvesting—and 2,390 additional votes had signatures that did not match those on file or other problems with the ballot that prompted their disqualification.⁵² Voters reported never receiving ballots, despite official records showing that ballots were cast in their name. Concerns about uncertainty and corruption prompted a leader in the NAACP to call for a new election.⁵³
- Dallas, TX: Miguel Hernandez was arrested and convicted of taking an elderly woman’s ballot, forging her signature, and casting that vote in the 2017 Dallas City Council race. In all, some 700 forged mail-in ballots were submitted. The fraud was detected in part because the same witness signed each ballot with a fake name.⁵⁴

The vote-by-mail agenda puts these successful election integrity measures on the chopping block. The HEROES Act contains provisions that require states to offer no-excuse absentee voting, and to automatically send absentee ballots to voters in all future elections after they request one once, which, given poor list maintenance, likely means that ballots will continue to go out to a given address long after a voter dies or moves away. The bill also bars the application of voter ID laws to mail-in voting and creates a significant loophole that undermines their application to in-person voting. Meanwhile, liberal organizations and their allies continue to file lawsuits seeking to invalidate signature verification laws and witness requirements. The net result of the vote-by-mail agenda would be more Americans casting mail ballots than ever before, with few protections in place to detect, deter, or stop fraudulent conduct.

Legalizing Vote Harvesting Exposes Voters to Coercion, Intimidation, and Disenfranchisement

No one’s voting rights should be left in someone else’s hands, but that is precisely what vote harvesting does. The practice is fairly straightforward: third parties, be they campaign workers, partisan activists, or political operatives, go door-to-door offering to “help” voters fill out or cast their mail-in ballots. Proponents call this “voter assistance” or “community collection,” but the practice has a dark side. Simply put, vote harvesting can be used to intimidate, coerce, and disenfranchise voters, and fix the

⁵² <https://www.northjersey.com/story/news/paterson-press/2020/05/18/paterson-nj-election-investigation-started-months-ago/5214781002/>; Jonathan Dienst, *Close Results In Paterson Vote Plagued By Fraud Claims; Over 3K Ballots Seemingly Set Aside*, NBC New York (May 20, 2020), <https://www.nbcnewyork.com/news/local/close-results-in-paterson-vote-plagued-by-fraud-claims-over-3k-ballots-seemingly-set-aside/2425813/>.

⁵³ Jonathan Dienst and Joe Valiquette, *NJ NAACP Leader Calls For Paterson Mail-In Vote to Be Canceled Amid Corruption Claims*, NBC New York (May 27, 2020), <https://www.nbcnewyork.com/news/politics/nj-naACP-leader-calls-for-paterson-mail-in-vote-to-be-canceled-amid-fraud-claims/2435162/>.

⁵⁴ Tasha Tsiaperas, *Bogus Voter Gets 180 Days in Dallas Jail for Forging Mail-In Ballot*, Dallas Morning News (Jun 20, 2018), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiZj4TsvcbpAhX3hXIEHajlDjsQFjAAegQIBRAB&url=https%3A%2F%2Fwww.dallasnews.com%2Fnews%2Fcourts%2F2018%2F06%2F20%2Fbogus-voter-gets-180-days-in-dallas-jail-for-forging-mail-in-ballot%2F&usg=AOvVaw1vWGgq0L2_KOKFRSww8D9R.

outcome of elections:

- North Carolina 9th Congressional Race: Leslie McCrae Dowless, an operative working for Republican candidate Mark Harris, allegedly ran a vote harvesting operation that gained possession of, and illegally altered or destroyed, hundreds of ballots.⁵⁵ Dowless, who now faces criminal charges, is accused of having paid operatives to go door-to-door getting voters to request absentee votes, and then returning to collect them. The fraud so tainted the election that the results were invalidated and a new election was ordered to be held.
- Martin, KY: Ruth Robinson, the mayor of Martin, Kentucky, threatened residents of her real estate properties and public housing with eviction if they didn't sign absentee ballots supporting her reelection. She also targeted disabled residents, and bribed others. She was eventually convicted and given 40 months in prison.⁵⁶

Vote harvesters have been known to intercept or cast other people's ballots. This may have occurred in the emerging Paterson scandal, given that voters are listed as having returned votes even though they never received a ballot. In 2017, postal worker Noe Olvera pleaded guilty to taking a \$1,000 bribe to provide campaign workers with a list of absentee voters along his postal route.⁵⁷ In some areas, vote harvesting is deeply ingrained. *Politiqueras* are a well-known fact of life in South Texas, and are often implicated in vote-buying and vote-harvesting schemes. After a series of indictments of *politiqueras* in Texas's Rio Grande Valley, the number of mail-in ballots in Democratic primaries for Cameron County justice of the peace offices fell 97%, likely speaking not only to the scope of the fraudulent behavior by those indicted, but to the deterrent value of the prosecutions.⁵⁸

Even when vote harvesting operations do not rise to the level of criminal behavior, they can still cross ethical lines. In 2012, a Coconino County, Arizona-based advocacy group reportedly told workers to lie to voters and tell them they were actually county election officials collecting ballots.⁵⁹ And in 2016, vote harvesters in Missoula County, Montana, were reported to have collected ballots, asked voters who they voted for, and then lobbied for their preferred candidates. Some who voted the "wrong" way were sufficiently concerned that their ballots would not be delivered that they requested replacements.⁶⁰

Uncertainty is inherent to vote harvesting: Voters are unsure whether their ballots are properly delivered to election officials, who are themselves unsure whether harvested votes are legitimate, and were freely and privately voted. Sensibly, many states have taken steps to ban or strictly regulate the practice, whether by limiting the number of ballots a given individual may collect, or limiting voter

⁵⁵ Jason Snead and Hans von Spakovsky, *North Carolina Election Fraud Should Be a Wake-Up Call for the Left*, Daily Signal, <https://www.heritage.org/election-integrity/commentary/north-carolina-election-fraud-should-be-wake-call-the-left>.

⁵⁶ See, The Heritage Foundation Election Fraud Database, entry: Ruth Robinson, www.heritage.org/voterfraud.

⁵⁷ *Former Postal Employee Convicted of Soliciting Bribes During Election*, U.S. Attorney's Office, Southern District of Texas (Mar. 17, 2017), <https://www.justice.gov/usao-sdtx/pr/former-postal-employee-convicted-soliciting-bribes-during-election>.

⁵⁸ John Burnett and Mariza Penaloza, *In Rio Grande Valley, Some Campaign Workers Are Paid To Harvest Votes*, NPR (Jul. 7, 2015), <https://www.npr.org/2015/07/07/413463879/in-rio-grande-valley-some-campaign-workers-are-paid-to-harvest-votes>.

⁵⁹ Matt Vasilogambros, *Would You Give Your Ballot to a Stranger?*, Pew (Oct. 11, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/11/would-you-give-your-ballot-to-a-stranger>

⁶⁰ Holly Michels, *Delivery Ballots for Others Isn't Illegal, But Offers To Do So Concern Voters*, Missoulian (Oct 17, 2016), https://missoulian.com/news/state-and-regional/govt-and-politics/delivering-ballots-for-others-isnt-illegal-but-offers-to-do-so-concern-voters/article_182f8ab5-e7f0-53a9-9c2e-dcd745fbb609.html.

assistance to family members or caregivers.⁶¹ Unfortunately, even these measures are under attack. The HEROES Act contains language explicitly legalizing the practice. Numerous lawsuits have been filed to overturn vote harvesting bans and regulations, including one that Arizona recently asked the United States Supreme Court to review.⁶²

Conclusion

As this paper briefly shows, the mandated vote-by-mail agenda is fundamentally flawed. If vote-by-mail were rushed into place this year by federal mandate or judicial intervention, the most likely outcome would be confusion, chaos, and disenfranchisement: millions of ballots sent to the wrong address, with some voters receiving multiple ballots and others perhaps receiving no ballot at all. The prospect of millions of unclaimed ballots in circulation—some of them going to entirely fictitious registrants—with few provisions in place to facilitate the detection and rejection of falsely cast ballots, would create significant new opportunities for fraud. Election officials throughout the nation would be forced to devise entirely new voting systems and procedures with limited time and resources, and test them in the crucible of a presidential election. Voters could expect, at a minimum, lengthy delays in election results, as processing and counting absentee ballots takes time. In reality, it is almost certain that these delays will be exacerbated by litigation challenging election rules, vote counting procedures, and ballot review standards. Partisan litigators will present their lawsuits in the best possible light, but it will be impossible to escape the perception that the motive in seeking last-minute changes to the law is simply an ends-justify-the-means strategy to secure victory in key races.

In sum, a rushed or mandated vote-by-mail system will leave voters with grave doubts, whether real or perceived, about the legitimacy of the election and the fairness of the process. Accommodations clearly must be made to protect vulnerable voters in the midst of this pandemic, but the current risk to public health does not justify—and does not require—making rash choices that risk long-term damage to the health of American democracy. Fortunately, voters do not have to choose between their safety and the integrity of their elections. As we are already seeing, sweeping changes are not needed to allow for safe and secure voting during the pandemic. Instead, states should consider limited and temporary measures—such as expanding absentee voting to cover vulnerable people, widely distributing absentee ballot applications for eligible voters, and in-person voting changes that facilitate social distancing—and devote their efforts fully to making these more limited programs work in November. This approach, coupled with safeguards like vote harvesting bans, will protect the integrity of absentee ballots, inspire voter confidence, and allow for a smooth and safe election.

⁶¹ See, von Spakovsky, *supra* note 2.

⁶² Howard Fischer, *Brnovich Takes Ballot Harvesting Case to U.S. Supreme Court*, Arizona Capitol Times (Apr. 27, 2020), <https://azcapitoltimes.com/news/2020/04/27/brnovich-takes-ballot-harvesting-case-to-u-s-supreme-court/>.

About the Honest Elections Project

Elections are the cornerstone of democracy, but their legitimacy is under attack. Election laws that protect against fraud and corruption are being challenged in court and denigrated in public. Politicians are questioning the legitimacy of the elections they lose. And activists are advocating radical plans to reshape and restructure the elections process for partisan gain. Most Americans know that voting is too important to be politicized, but their wishes and views are too often being drowned out or ignored.

That's why the Honest Elections Project exists. We are a nonpartisan group devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, the Honest Elections Project will defend the fair, reasonable, common sense measures that voters want in place to protect the integrity of the voting process. Above all, the Honest Elections Project is here to support the voting rights of all Americans—rights which hinge on an electoral system that ensures every lawful ballot is counted, and which guards against fraud.

Preserving the integrity of our democracy should be an issue above politics. That's what American voters want, and the Honest Elections Project is here to make sure they get nothing less.

About Jason Snead

Jason Snead is the executive director of the Honest Elections Project. Prior to heading the project, Jason was a Senior Policy Analyst in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation, where he studied, wrote, and spoke frequently on the importance of preserving the integrity of American elections. Jason also managed the development of the Heritage Election Fraud Database, a unique tool aggregating proven instances of voter fraud from around the nation.

Jason holds a master's degree in public policy from George Mason University's Schar School of Policy and Government.

About the 85 Fund

Over the course of 85 essays, the authors of *The Federalist* did more than anyone in human history to explain the connection between structural limits on government power and the protection of our dignity and our freedoms. The 85 Fund is a 501(c)(3) nonprofit which supports public policy projects that are rooted in those same priorities, and seeks to partner with allies who can advance them.

