**Voter Suppression & Voter Fraud**

Rex C. Mitchell, Ph.D. - August 7, 2020

*If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.* – Aristotle

There is a long history of support for voting in this country. "No taxation without representation" is a political slogan originating during the 1700s that summarized one of the grievances of the American colonists, and was one of the major causes of the American Revolution.

Despite support for the *concept* of voting, our country started with a very constricted access to voting, limiting it to white, male, property owners. Through the subsequent two-and-a-half centuries, there has been an uneven but generally broadening of access to voting – despite many efforts by states and localities to fight against inclusion. Nine of the Constitutional Amendments, many Federal laws, and most of many court cases have contributed to increasing access to voting – independent of race and ethnicity, gender, language, disability, age, and other factors. The landmark *Voting Rights Act of 1965* passed by Congress took major steps to curtail voter suppression.

However, greater voter enfranchisement was met with fresh resistance and, in 2013, the Supreme Court gutted the Voting Rights Act in its 5-4 ruling on *Shelby County v. Holder*, paving the way for states and jurisdictions with a history of voter suppression to enact restrictive voter identification laws. Consequently, 23 states created new obstacles to voting in the five years leading up to the 2018 elections, according to the national, nonpartisan coalition *Election Protection*. Currently, there are new and increased efforts to restrict voting access – for transparently political purposes.

Politicians fighting against voter inclusion often cloak their initiatives as protection against past and potential voter fraud – somehow, fraud that has been or could be committed only by people with certain ethnic-socio-economic-political-party characteristics. They offer no support for their claims of fraud. This essay explores the data.

**Voter Suppression Tactics**

The number of people disenfranchised by efforts on the right is an important benchmark against which "fraud" pales by comparison. Over the past decade, half the states in the nation have placed new, direct burdens on people’s right to vote, abetted by the 2013 Supreme Court decision mentioned above (Johnson & Feldman, 2020). Research by the Brennan Center for Justice (2019) found:

After the 2010 election, state lawmakers nationwide started introducing hundreds of harsh measures making it harder to vote. The new laws range from strict photo ID requirements to early voting cutbacks to registration restrictions. Overall, 25 states have put in place new restrictions since then: 15 states have more restrictive voter ID laws in place (including six states with strict photo ID requirements), 12 have laws making it harder for citizens to register (and stay registered), ten made it more difficult to vote early or absentee, and three took action to make it harder to restore voting rights for people with past criminal convictions. In 2016, 14 states had new voting restrictions in place for the first time in a presidential election.

These are only some of the tactics used to restrict and suppress voting – disproportionally aimed at certain racial-political-party segments of the population. Here is an expanded list:

(Brater, Morris, Pérez, & Deluz, 2018; Carnegie Corporation, 2019; FindLaw, 2020; Time, 2020; Wang, 2018)

**1. Voter roll purges.** Under the guise of reviewing voter rolls to remove duplicate names, the names of deceased individuals, or those with standing felony convictions – officials have undertaken indiscriminate “purges” of voter lists in recent years, deleting millions of eligible voters’ names, often with a disproportionate impact on communities of color.

**2. Voter ID requirements.** Election officials use false claims of rampant voter fraud to justify strict requirements such as a photo ID, often aimed at suppressing the votes of people of color and younger voters. Some laws require a physical street address, and discriminate against groups that are more likely to have P.O. Box addresses, such as Native Americans living on reservations. Some accept only certain kinds of IDs, or require certain kinds of documentation to get IDs, or require certain kinds of photos.

**3. Shutting down Department of Motor Vehicles offices in minority neighborhoods** – thus making it more difficult for residents to obtain voter IDs.

**4. Local residency requirements.** For example, requiring people to live in a district for at least 30 days before voting.

**5. Lack of language access.** The English-language requirements of the past may be gone, but voting rights groups regularly receive reports that local jurisdictions are not translating materials or offering language assistance as required by law, proving a persistent barrier to increased voting among language minorities.

**6. Gerrymandering.** Redefining political districts to ensure that one party maintains a political advantage takes many forms, e.g., creation of at-large voting districts to dilute minority vote. An at-large election covers voters across a city or county, in contrast to smaller district elections, which can often result in higher representation for people of color since votes are not diluted by an area-wide population. As a result, some officials create at-large districts to limit the influence of minority communities.

**7. Restrictions on voter registration.** For example, prohibiting registration drives or prohibiting Election Day voter registration.

**8. Polling place closures/consolidations.** A recent USA Today analysis found that election officials have closed thousands of polling places, largely affecting communities of color. For example, in Chicago’s Cook County, which has the largest non-Hispanic black population in the country, election administrators closed or moved 95 polling places. Louisville, KY recently went from 170 polling stations to 5.

**9. Reduced early voting.** States and localities have long used early voting to reduce Election Day crunch and open up the process to prospective voters bound by work or other commitments. Recently, officials across the nation have curtailed early voting, largely hitting communities of color.

**10. Reduced voting hours.** As with limiting early voting, reducing voting hours can make voting less convenient, and even impossible, for many voters. Low-income and working-class people often have less freedom to arrive late or leave early from work, or to take a break from their shifts in the middle of the day.

**11. Restrictions on absentee or mail-in ballots.** Some states require an excuse for absentee voting and/or prohibit mailing ballots to voters. Several current cases filed by the GOP are trying to further restrict or prohibit sending mail-in ballots to citizens.

**12. Partisan election administrators.** Our country’s highly decentralized election system hands the responsibility for managing elections to state and local administrators, some of them partisan officials with a clear interest in election outcomes favorable to their parties and candidates. Too often, this results in efforts to suppress the votes of groups that might be viewed as opponents.

**13. Voter intimidation tactics** – such as observers at polling places. See the next section for examples.

**14. Lack of funding for elections.** A lack of funding inhibits the ability of localities to manage elections that are safe and ensure that everyone’s vote counts equally. Some of these problems came to the fore during the 2000 presidential election in Florida, where the recount process shined a spotlight on issues ranging from flawed ballot designs to voting machines that overheated and failed.

**15. Weaken or block the Federal Election Committee.** The Committee has been unable to meet, issue advisory opinions, or approve enforcement actions since August 2019, because it lacks a quorum and President Trump has not nominated any replacements.

**16. Provisional ballot requirements.** Federal law allows voters whose eligibility is in question to use a provisional ballot to be counted once the voter is confirmed eligible. However, localities set their own rules in how many provisional ballots to print and training poll workers on processing them, resulting in eligible voters being turned away or their ballots discounted.

**17. Poorly trained poll workers.** Poll workers need good training to follow the right policies such as properly checking IDs, giving language assistance, preventing voter intimidation, and offering provisional ballots. A lack of funding, and a lack of commitment to making voting welcoming and convenient, means many poll workers are poorly equipped to do their jobs.

**The GOP’s Plan to Sabotage the 2020 Election**

In a June 18 interview by Politico focusing on the 2020 election, President Trump stressed that the Republican Party is spending tens of millions of dollars on a multifront legal battle. “My biggest risk is that we don’t win lawsuits,” Trump said. “We have many lawsuits going all over. And if we don’t win those lawsuits, I think – I think it puts the election at risk.” (Politico, 2020)

He was referring to the series of lawsuits filed by his campaign and the Republican National Committee that fight the expansion of mail-in voting and seek to limit access to the ballot box in November.

In February, the Trump campaign and the RNC announced that they would spend $10 million on voting-related lawsuits in 2020 – a figure that has since increased to more than $20 million. The RNC has so far filed lawsuits in more than a dozen states, including the battlegrounds of Colorado, Minnesota, Michigan, Wisconsin, Pennsylvania, and Florida. These suits are a mix of offense and defense. Some attempt to block litigation brought by Democratic groups to expand mail-in voting in response to the coronavirus pandemic. Others seek to invalidate state-level policies by saying that expanding access to mail-in ballots invites fraud (Kroll, 2020).

In addition to trying to interfere in the election, there is another uniting theme of the GOP suits, says Rick Hasen, a University of California, Irvine law professor and author of *Election Meltdown*: “Casting doubt on the legitimacy of the election. Raising spurious fraud claims.”

In Pennsylvania, for instance, the RNC is suing the state government and election boards in all 67 counties to ban the use of secure drop boxes for submitting take-home ballots and to eliminate the requirement that poll watchers can only serve in the county where they live. In Florida, Republicans have sued to block efforts that would make the state pay for postage on mail-in ballots, would change state law so that any mail-in ballot postmarked by the date of the election (as opposed to received by Election Day) will be counted, and would allow paid organizers to gather and submit completed absentee ballots (Kroll, 2020).

The 2020 presidential election will be the first in nearly 40 years when the RNC isn’t bound by the terms of the 1982 Consent Order between the Democratic and Republican parties. The Order resulted from an outrageous 1981 incident in which a voter in New Jersey was turned away from her polling site by a gun-carrying member of the “National Ballot Security Task Force” (a massive voter-suppression project funded and carried out by the Republican National Committee and the New Jersey Republican Party). Republicans hired county deputy sheriffs and local policemen with guns, two-way radios, and “National Ballot Security Task Force” armbands to patrol predominantly black and Hispanic precincts in New Jersey. They posted large warning signs outside polling places saying that it was “a crime to falsify a ballot or to violate election laws.” (Kroll, 2020)

The seven sections of the Consent Order require the RNC and other defendants to: “comply with all applicable state and federal laws protecting the rights of duly qualified citizens to vote for the candidate(s) of their choice” – and refrain from a long set of prohibited activities, including: campaigning within restricted polling areas, interrogating prospective voters, permitting their agents to be attired or equipped in a manner which creates the appearance that they are (any of a long list of “official-like” entities), having private personnel deputized, placing signs, defacing or removing legal signs, and “undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor...” (Consent Order, 1982).

There is little reason to believe that the RNC and accomplices will not use some of these activities again to interfere with the 2020 election (likely assuming that the worst consequence for them may be merely another consent order to not do that in future elections).

Currently, the RNC is sending millions of dollars to state Republican parties to vastly expand “Election Day operations,” which include recruiting 50,000 poll observers to deploy in key precincts (Kroll, 2020).

Depending on the state, poll watchers enlisted by political parties can challenge a voter’s eligibility based on their address, citizenship, and even the date they registered to vote! Michigan law, for instance, says poll watchers need only “good reason” to pull a prospective voter out of line and challenge their eligibility. North Carolina allows anyone registered to vote with “good moral character” (whatever that means) to work as a poll watcher. Even in Oregon and Washington state, where elections are conducted by mail, poll watchers can observe county clerks count mail-in ballots and make challenges when they see fit (Kroll, 2020).

In addition, President Trump and his allies have neutered the Federal Elections Committee for this election. The six-person Federal Elections Committee has to have at least four members to meet, issue advisory opinions, or approve enforcement actions. Since August 2019, the Committee has had only three members, rendering it powerless. President Trump has not nominated a replacement, and the GOP-controlled Senate would be unlikely to do anything before the election in November. Even if a new commissioner were confirmed, the Committee would continue to be hampered by partisanship with the required three Republican members opposed to restrictions on campaign spending. The FEC has a growing backlog of cases, now more than 300, including one that the Trump campaign laundered $170 million in campaign funds through firms run by his campaign manager and campaign lawyers (Los Angeles Times, 2020).

**Voter Fraud Experience in this Country**

Politicians at all levels of government have repeatedly, and falsely, claimed the 2016 and 2018 elections were marred by millions of people voting illegally. However, the Brennan Center for Justice (an independent, nonpartisan law and policy organization) concludes that “extensive research reveals that fraud is very rare, voter impersonation is virtually nonexistent, and many instances of alleged fraud are, in fact, mistakes by voters or administrators. The same is true for mail ballots, which are secure and essential to holding a safe election amid the coronavirus pandemic” (Weiser et al., 2020).

President Trump and his allies continue to claim, without evidence, that there has been massive voter fraud in our elections. Before attacking mail voting, they pushed similar false narratives about non-citizen voting, voter impersonation, and double voting to try to discredit unfavorable election results, and to enact laws that reduce turnout for certain groups of citizens.

For example, shortly after being elected in 2016, the president tweeted: “In addition to winning the electoral college in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.” At that time, the Brennan Center for Justice researched and rebutted claims of widespread non-citizen voting. The ensuing report found “only about 30 incidents of suspected non-citizen voting that were even referred for further investigation or prosecution out of 23.5 million votes tabulated in the 42 jurisdictions studied, which were selected because of their high rates of non-citizen residents. In other words, non-citizen votes accounted for no more than 0.0001 percent of the 2016 votes in these jurisdictions” (Feldman, 2020).

In November 2018, the president claimed: “The Republicans don’t win and that’s because of potentially illegal votes. When people get in line that have absolutely no right to vote and they go around in circles. Sometimes they go to their car, put on a different hat, put on a different shirt, come in and vote again.” A Brennan Center report (Feldman, 2020) determined that Americans are more likely to be struck by lightning than to commit voter-impersonation fraud. Follow-up work by Loyola Law School’s Justin Levitt found just 31 credible instances of impersonation fraud out of more than 1 billion ballots cast from 2000 to 2014 ( Lopez, 2017).

Mail voting has taken on new importance as a crucial strategy for protecting voters’ safety amid the Covid-19 pandemic. President Trump and his surrogates have claimed that mail voting is rife with fraud, and that efforts to expand access to mail voting are illegitimate. That is incorrect: as the Brennan Center has explained, fraud in mail voting remains extremely rare, and none of the states that hold their elections primarily by mail have had voter fraud scandals since implementing the systems (Feldman, 2020). This report continues by debunking 10 of “the most egregious voter fraud claims of the past five years,” starting with the Trump lie that non-citizens voting in 2016 caused him to lose the popular vote by 3 million votes.

In 2017, members of President Trump’s doomed Voter Fraud Commission relied on a Heritage Foundation database that claimed to contain evidence of approximately 1,100 instances of voter fraud. The Brennan Center analyzed this database and found that the claims were “grossly exaggerated” and “devoid of context.” There were only 10 cases involving in-person voter-impersonation fraud and only 41 involving non-citizen voting. Put in context, the think tank inadvertently undermined claims of widespread voter fraud. In the period covered by the database, which stretched back to the Truman era, more than 3 billion votes were cast in federal elections alone, along with many more in state and local elections. Thus, the actual cases identified in the database made up an infinitesimally small portion of the overall number of votes cast. Less than seven months after its inception, Trump’s voter fraud commission was disbanded (Feldman, 2020).

**But Won’t Mail-in Voting Make This The Most Fraudulent Election in History?**

Mail balloting is not a new idea; it was already deeply embedded in the American electoral system long before the coronavirus hit. In five states (Colorado, Hawaii, Oregon, Utah, and Washington), mail balloting has been the primary method of voting. In 28 additional states, all voters have had the right to vote by mail ballot if they choose, without having to provide any reason or excuse. Over time, a growing number of voters have chosen that option. In the last two federal elections, roughly one out of every four Americans cast a mail ballot (Weiser & Ekeh, 2020)

Despite this dramatic increase in mail voting over time, fraud rates remain infinitesimally small. None of the five states that hold their elections primarily by mail has had ***any*** voter fraud scandals since making that change. As the New York Times editorial board notes, “states that use vote-by-mail have encountered essentially zero fraud: Oregon, the pioneer in this area, has sent out more than 100 million mail-in ballots since 2000, and has documented only about a dozen cases of proven fraud.” An exhaustive investigative journalism analysis of all known voter fraud cases identified only 491 cases of absentee ballot fraud from 2000 to 2012. During that same period, 497 Americans were killed by lightning! In states with vote-by-mail, safeguards built into the system can catch or deter anyone who might tamper with a ballot (Hatmaker, 2020)

Ellen Weintraub, Chair of the US Federal Election Commission, posted several tweets about voting by mail on May 27, 2020. For example, responding to the question, It’s been claimed that voting by mail leads to massive corruption and fraud, but what are the facts?, she wrote (Weintraub, 2020):

U.S. citizens will vote by mail this year in record numbers. In the face of a global health emergency, election officials across the country from both parties are working heroically to ensure that voting by mail is accurate, accessible, safe & secure. There's simply no basis for the conspiracy theory that voting by mail causes fraud. None. @CNN & @washingtonpost fact-checks show this. But many others have examined the issue and arrived at the same conclusion. Still others have provided some key context. Take a look! (she continues with examples)

An extensive article in the Washington Post (Gardner, 2020) concluded “current and former election administrators said it would be virtually impossible for a foreign country to produce and mail in phony ballots without detection” – refuting an issue Attorney General Barr floated as a serious possibility in a June 2020 interview, saying “There are a number of foreign countries that could easily make counterfeit ballots, put names on them, send them in, and it’d be very hard to sort out what’s happening.” Barr did not offer any evidence of how such a scenario would take place. Elections officials in multiple states said it would be virtually impossible for a foreign government to achieve what Barr described (because of the security precautions already in place). For example, Judd Choate, the elections chief in Colorado, where nearly all voters cast ballots by mail, said “there is zero chance” it could happen in his state because of security precautions in place there. “There isn’t an election office in this country that doesn’t know how many ballots they’ve mailed out, how many they’ve gotten back in, and who they were sent to,” said Tammy Patrick, a former election official with Maricopa County, Ariz., and now a senior adviser to the bipartisan foundation Democracy Fund. “It is absolutely not the case that someone could create a multitude of ballots and in some way infuse them or inject them into the system without detection.”

If Americans had to choose between a slightly increased risk of electoral fraud or cancelling the elections altogether, it would be a straightforward decision. They don’t. States such as Oregon and Colorado, which allow everyone to vote by mail in every election, have developed sophisticated techniques that make fraud highly unlikely (The Economist, 2020).

It goes without saying that Americans should not be forced to choose between voting and protecting their health.

**Experience Has Identified Strong Safeguards For Mail-in Voting**

1. **Identity verification**: The principal method used to detect and prevent fraud is the mail ballot envelope itself, where each voter must include personal identifying information (such as address, birthday, and driver’s license number or last four digits of a Social Security number). It should include a signature that can be used to match against the voter rolls. The voter’s remaining personal information is also matched against the information stored on the voter rolls. Ballots are rejected if they are not sent in regulation envelopes with the correct design, both of which vary widely from state to state in format, size and paper stock.

Further, it would be nearly impossible for foreign actors to disrupt an election by mailing out fake ballots, a scenario floated by Barr (Gardner, 2020). For one thing, ballots don’t list just the presidential candidates; they usually have candidates for state and city offices, ballot initiatives, etc. Facing that would require hundreds of different ballot designs in a single county and the United States has more than 3,000 counties. Also, those trying to counterfeit ballots would have to know the names and addresses of registered voters.

2. **Bar codes**: Bar codes on the ballot envelopes allow election officials to keep track of ballot processing and help voters know whether their ballot has been received. Bar codes also allow states to identify and eliminate duplicate ballots if a voter casts more than one, whether mistakenly or corruptly. As in Colorado, ballot envelopes could contain tally marks that are unique to each voter.

3. **Ballot tracking through the U.S. Postal Service**: In many jurisdictions, including California, Colorado and Florida, ballot envelopes are equipped with intelligent mail bar codes linked to the postal service that enable voters and election officials alike to track an envelope from drop-off to delivery and processing at the local administrator’s office. Ballots postmarked on or before Election Day must count.

4. **Secure drop-off locations and drop boxes**: Multiple ballot return options limit the opportunity for ballot tampering by fostering voter independence in returning a ballot. A common layer of security to ensure that ballots are not stolen or tampered with – at least for voters who can leave their homes – is secure drop-off locations. Ballot drop-off locations help maintain a secure chain of custody as the ballot goes from the voter to the local election office.

5. **Harsh penalties**: Anyone who commits voter fraud using a mail ballot risks severe criminal and civil penalties: up to five years in prison and $10,000 in fines for each act of fraud under federal law, in addition to any state penalties. In Oregon, for example, voting with or signing another person’s ballot is a Class C felony punishable by up to five years in prison. These penalties provide a strong deterrent to voter fraud; it makes no sense to risk such significant punishment for one additional vote.

...Therefore, feel free to join President Trump and Attorney General Barr in voting by mail!!

**Finally, Please Vote**

*Every election is determined by the people who show up.* – Larry Sabato, professor and political scientist at the University of Virginia who is well known for his predictions of election outcomes and his work to increase civic participation.

*Bad officials are elected by good citizens who do not vote.* – George Jean Nathan, an American editor and critic who often worked with the better remembered H. L Mencken.

*Someone struggled for your right to vote. Use it.* – Susan B. Anthony, an American suffragette, reformer, and anti-slavery activist known for her work for women's rights.

*The vote is precious. It is the most powerful non-violent tool we have in a democratic society, and we must use it.* – John Lewis (1940 - 2020), an American politician and civil-rights leader who served in the House of Representatives from 1987 until his death.

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