

# Congress of the United States

Washington, DC 20515

March 8, 2021

The Honorable Robin Vos  
President, National Conference of State Legislatures  
Speaker, Wisconsin Assembly  
Room 217 West  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

The Honorable Scott K. Saiki  
President-Elect, National Conference of State Legislatures  
Speaker, Hawaii House of Representatives  
Hawaii State Capitol, Room 431  
415 South Beretania St.  
Honolulu, HI 96813

Dear Speaker Vos and Speaker Saiki:

The 2020 general election demonstrated the need for state-based legislative reforms to improve the integrity of our federal elections. In 2020, several states made last-minute changes to election administration—such as expanded mail-in voting and ballot harvesting, relaxed voter verification measures, and extended deadlines for voter registration and ballot receipt—without the necessary planning, hiring, training, or procurement. This led to uncertainty, confusion, and delay in many election results. We respectfully write to urge state legislatures to implement measures to improve state election integrity so that all Americans may have confidence in the integrity of future federal elections.

The Elections Clause in Article I of the U.S. Constitution gives state legislatures the authority to prescribe “[t]he Times, Places and Manner of holding Elections for Senators and Representatives” within their jurisdictions.<sup>1</sup> In addition, the Electors Clause in Article II of the U.S. Constitution grants state legislatures the power to determine the manner of appointing presidential electors.<sup>2</sup> These provisions, in addition to fundamental principles of federalism, make clear that state legislatures have preeminent authority to promulgate their own election law and to administer elections for federal office.

Republicans in Congress sought to highlight the problems with these last-minute changes to state election administration. Beginning in July 2020, Republicans on the House Administration Committee wrote to several localities across the country to warn of potential problems in the 2020 general election and deployed staff members to numerous states across all regions of the country to examine and observe the administration of the general election

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<sup>1</sup> U.S. CONST. art I § 4, cl. 1.

<sup>2</sup> U.S. CONST. art. II, § 1, cl. 2.

firsthand.<sup>3</sup> Among other issues, Republicans warned of errors with voter registration rolls and lack of preparedness for mail-in ballots and uncovered issues with signature matching and verification, slow ballot processing and counting, questionable practices for ballot drop boxes, and extreme ballot receipt deadlines.<sup>4</sup> On September 23, 2020, Republicans on the Judiciary Committee and the Oversight and Reform Committee released a report detailing the Democrats' efforts at sowing uncertainty, inaccuracy, and delay in the 2020 general election.<sup>5</sup>

Democrats in Congress, unfortunately, refused to join us in addressing these problems. They ignored warnings about last-minute changes to the 2020 general election. Earlier this year, Democrats voted down a motion by Representative Rodney Davis, Ranking Member of the House Administration Committee, that would have promoted election integrity and increased voter confidence in federal elections.<sup>6</sup> Now, Democrats have passed H.R. 1, a bill that would amount to an unconstitutional federal take-over of election administration and eliminate already-existing election integrity measures in state law.

State legislatures are best positioned—and, pursuant to our constitutional framework, fundamentally empowered—to safeguard the integrity of federal elections. To that end, we encourage state legislatures to consider the following measures to improve election integrity:

- ***Increased safeguards for mail-in ballots.*** In the 2020 general election, many states moved to universal mail-in voting, in which election officials mailed unsolicited ballots to all registered voters in the jurisdiction.<sup>7</sup> This occurred despite the refusal of some states to conduct meaningful list maintenance, increasing the likelihood that these live ballots would be received by someone other than the voter.<sup>8</sup> Unlike traditional absentee voting, where a voter solicits and expects to receive a ballot by mail, the registered voter in a universal mail-in voting system is not necessarily expecting to receive the ballot and may not notice if it does not arrive. This break in the chain of custody for a voter's mailed-in ballot, coupled with some states' use of unmaintained voter registration lists, introduces greater risk of election crime or

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<sup>3</sup> See, e.g., Comm. on House Admin., Significant Events in the 2020 Election Cycle, <https://republicans-cha.house.gov/media/significant-events-2020-election-cycle>.

<sup>4</sup> *Id.*

<sup>5</sup> H. Comm. on the Judiciary & Comm. on Oversight & Reform, *How Democrats are Attempting to Sow Uncertainty, Inaccuracy, and Delay in the 2020 Election*, at 1-3 (Sept. 23, 2020) [hereinafter "*Uncertainty, Inaccuracy, and Delay in the 2020 Election*"].

<sup>6</sup> Motion to Refer, H. Res. 5, 117th Cong. (2021).

<sup>7</sup> *Uncertainty, Inaccuracy, and Delay in the 2020 Election*, *supra* note 5.

<sup>8</sup> See, e.g., Settlement Agreement, *Judicial Watch, Inc. et al. v. Logan et al.*, 17-CV-8948 (C.D. Cal.), <http://www.judicialwatch.org/wp-content/uploads/2019/01/JW-v-Logan-California-NVRA-settlement-08948.pdf?D=1>; Jennifer Van Laar, *Hundreds of CA-25 voters have likely received multiple mail ballots for special election*, RedState (May 11, 2020), <https://redstate.com/jenvanlaar/2020/05/11/hundreds-of-ca-25-voters-have-received-multiple-mail-ballots-for-special-election-n136904>

administrative error. The 2020 general election saw a drastic increase in mail-in voting, with 65 million people voting by mail due to the COVID-19 pandemic.<sup>9</sup>

- ***Prohibiting ballot harvesting.*** Ballot harvesting is a practice in which anyone can pick up a voter's ballot and deliver it to a polling place.<sup>10</sup> In the 2018 midterm election, paid political operatives in some states exploited the system by pressuring voters to vote by mail and then assisting them in filling out their ballots.<sup>11</sup> Ballot harvesting lacks several fundamental safeguards. There is no way to verify the identity of the person dropping off ballots and their relationship, if any, to the voter. There is also no mechanism to determine the ballots' chain of custody, increasing the risk of lost, stolen, or destroyed ballots.
- ***Ensure signature verification.*** In 2020, election officials in some states altered or eliminated signature verification requirements for mail-in ballots.<sup>12</sup> Signature verification and other similar ballot safeguards help to ensure the ballot has been authentically submitted by a registered voter in the jurisdiction.<sup>13</sup>
- ***Ensure integrity of voter registration rolls.*** The National Voter Registration Act requires states to have a voter registration list maintenance program.<sup>14</sup> Despite this requirement, some voter rolls are notoriously inaccurate. According to one study, at the beginning of 2020, voter registration rates exceeded 100 percent of the eligible populations in 378 counties across the United States.<sup>15</sup> Inaccurate or outdated voter registration rolls increase the risk for election crime or administrative error.
- ***Ensure ballots are counted in a timely manner.*** In the 2020 general election, some state election officials and state court judges unilaterally extended deadlines for receiving mail-in ballots.<sup>16</sup> These changes, in addition to other requirements for when election official may begin counting ballots, led to considerable delay in tallying

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<sup>9</sup> Drew Desilver, *Most mail and provisional ballots got counted in past U.S. elections – but many did not*, Pew Research Center (Nov. 10, 2020).

<sup>10</sup> H. Comm. on H. Admin., Report: Political Weaponization of Ballot Harvesting in California (May 19, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> For example, in both Georgia and Pennsylvania, the state election official changed signature authentication requirements after activist litigation. See Order, In Re: November 3, 2020 General Election, No. 149 MM 2020 (Pa. Oct. 23, 2020); Democratic Party of Georgia v. Raffensperger, 1:19-cv-5028-WMR (N.D. Ga. Mar. 6, 2020) (Compromise Settlement Agreement and Release).

<sup>13</sup> See, e.g., U.S. Cybersecurity & Infrastructure Security Agency, Mail-in Voting: Election Integrity Safeguards, [https://www.cisa.gov/sites/default/files/publications/mail-in-voting-election-integrity-safeguards\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/mail-in-voting-election-integrity-safeguards_508.pdf).

<sup>14</sup> National Voter Registration Act of 1993 § 8(a)(4), 52 U.S.C. § 20507 (2002).

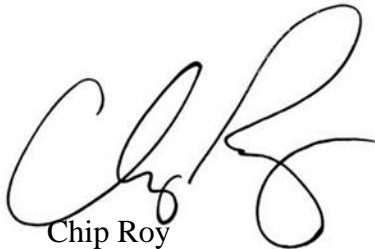
<sup>15</sup> Press Release, Judicial Watch, Judicial Watch Finds Millions of 'Extra' Registrants on Voting Rolls – Warns California, Pennsylvania, North Carolina, Colorado, Virginia to Clean up Voting Rolls or Face a Federal Lawsuit (Jan. 2, 2020), <https://www.judicialwatch.org/press-releases/judicial-watch-finds-millions-of-extra-registrants-on-voting-rolls-warns-california-pennsylvania-north-carolina-colorado-virginia-to-clean-up-voting-rolls-or-face-a-fed/>. (Judicial Watch reached this conclusion by analyzing data released by the U.S. Election Assistance Commission.)

<sup>16</sup> See *Uncertainty, Inaccuracy, and Delay in the 2020 Election*, *supra* note 5.

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election results.<sup>17</sup> Counting ballots in a timely manner improves voter confidence and certainty in election results.

We urge state legislatures to use their constitutional authority to implement these and other commonsense measures to improve the integrity of our federal elections. Thank you for your attention to this important matter.



Chip Roy  
Member of Congress

Sincerely,



Jim Jordan  
Ranking Member  
Committee on the Judiciary



Rodney Davis  
Ranking Member  
Committee on House Administration



James Comer  
Ranking Member  
Committee on Oversight and Reform

cc: The Honorable Jerrold Nadler, Chairman  
Committee on the Judiciary

The Honorable Zoe Lofgren, Chair  
Committee on House Administration

The Honorable Carolyn Maloney, Chairwoman  
Committee on Oversight and Reform

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<sup>17</sup> See, e.g., Katie Wendell & Kyle Bagenstose, *Still waiting for a winner? Blame outdated mail-in ballot counting laws in seven states*, USA Today (Nov. 4, 2020).