

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

Priorities USA, Rise, Inc., and the  
Detroit/Downriver Chapter of the A.  
Philip Randolph Institute,

Plaintiffs,

v.

Dana Nessel, in her official capacity as  
Attorney General of the State of  
Michigan,

Defendant,

and

Republican National Committee, Michigan  
Republican Party, Michigan House of  
Representatives, and Michigan Senate,

Intervenor- Defendants.

NO. 19-13341

JUDGE STEPHANIE DAWKINS  
DAVIS

MAGISTRATE JUDGE R.  
STEVEN WHALEN

**REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A  
PRELIMINARY AND  
PERMANENT INJUNCTION**

## **INTRODUCTION**

The Absentee Ballot Organizing Ban and the Voter Transportation Ban criminalize core political activity and conflict with federal law. Intervenor’s briefs, addressed together in this reply, do not give cause for the Court to reconsider its opinions expressed in the order denying (in part) the Secretary’s motion to dismiss, or to withhold equitable relief in advance of a critically important election. On this record, Plaintiffs submit that their request for an injunction should be granted.

## **ARGUMENT**

### **I. Plaintiffs are likely to succeed on the merits of their claims.**

#### **A. Absentee Ballot Organizing Ban**

##### *1. Void-for-Vagueness*

First, Plaintiffs are likely to succeed on their claim that the Absentee Ballot Organizing Ban is unconstitutionally vague. Intervenor’s argue that the challenged statute must be unconstitutionally vague “in *all* of its applications” for Plaintiffs to succeed on their facial challenge to the law. ECF No. 68 at 22; ECF No. 70 at 34. Not so. “The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment.” *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 251–52 (6th Cir. 1994) (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982)). The Absentee Ballot Organizing Ban

regulates expression protected by the First Amendment and carries criminal penalties; accordingly, the “standards of permissible statutory vagueness are strict.” *NAACP v. Button*, 371 U.S. 415, 432 (1963); *see also Springfield Armory, Inc.*, 29 F.3d at 252 (explaining when a law has criminal penalties, “a relatively strict test is warranted” (citing *Hoffman*, 455 U.S. at 499)); *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 727 (M.D. Tenn. 2019) (citing *Hoffman*, 455 U.S. at 499).

Nor are Plaintiffs’ void-for-vagueness claims speculative. *See* ECF No. 68 at 24; ECF No. 70 at 36. On this score, Intervenor do nothing more than rehash same arguments previously made by Defendant, *Compare* ECF No. 68 at 10, ECF No. 70 at 36 *with* ECF No. 27 at 36, and previously rejected by the Court, ECF No. 59 at 35. Intervenor attempt to define “solicit” to mean “request,” *see id.*, but the statute’s use of *both* terms suggest that solicit means something different. *See In re Davis*, – F.3d –, No. 19-3117, 2020 WL 2831172, at \*6 (6th Cir. June 1, 2020). As this Court has already recognized, the statute does not resolve what conduct is and is not captured by the law. ECF No. 59 at 35 (citing *Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 621 (1976)). The argument is no more persuasive the second time around.

## 2. *First Amendment*

Second, Plaintiffs are similarly likely to succeed on their First Amendment challenge to the Absentee Ballot Organizing Ban. The Court has already held that

the law burdens First Amendment activity and that it is subject to, at a minimum, exacting scrutiny. ECF No. 59 at 29-32, 37-38. In urging the Court to reconsider this ruling, Intervenorers rely on out-of-circuit precedent addressing voter registration largely raised by the Defendant in briefing the motion to dismiss. *Compare* ECF No. 68 at 14-17; ECF No. 70 at 20-21 *with* ECF No. 27 at 25. But, as this Court already explained, the reasoning of *Hargett* is more persuasive, and the expressive activity at issue in organizing absentee ballot applications “is difficult to distinguish” from that at issue in *Meyer v. Grant*, 486 U.S. 414 (1988) and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). ECF No. 59 at 37.

Intervenorers’ arguments otherwise take a myopic view of the speech and conduct implicated by the Absentee Ballot Organizing Ban. They urge the Court to focus only on the ban of the actual possession and submission of absentee ballot applications. ECF No. 68 at 15; ECF No. 70 at 19. This argument, of course, ignores that the law directly prohibits speech because it bans requests to assist voters, and possibly even bans other speech aimed at eliciting a request for assistance. Moreover, the law’s practical effect inhibits conversations about voting by absentee ballot and ultimately larger political conversations. Intervenorers’ argument is also contrary to the approach taken by the Supreme Court in other First Amendment cases. For example, in *Buckley* and *Meyer*, the Court did not evaluate the narrowest characterization of the conduct regulated by the law—the collection of signatures on

a petition—but rather considered the interactions that were impacted by banning that conduct. *Meyer*, 486 U.S. at 421-22; *Buckley*, 525 U.S. at 192. Similarly, in an abortion clinic buffer zone case, the Supreme Court looked beyond the law’s regulation of standing on a sidewalk in and of itself to consider the expressive activity that was burdened when individuals lost access to that forum. *McCullen v. Coakley*, 573 U.S. 464, 496-97 (2014) (striking down law that made it a crime to stand within 35 feet of the entrance to an abortion clinic as an infringement on right to speech). Likewise, the Absentee Ballot Organizing Ban burdens Plaintiffs’ ability to engage in one-on-one communications about the importance of voting in making by prohibiting circumstances under which that communication would take place. ECF No. 22-4 ¶ 12 (Decl. of Guy Cecil); ECF No. 22-5 ¶¶ 16-22 (Decl. of A. Hunter); ECF No. 22-6 ¶¶ 18, 26 (Decl. of M. Lubin).

The Absentee Ballot Organizing Ban does not survive strict, exacting, or indeed *any* level of scrutiny.<sup>1</sup> Intervenors repeatedly state that preserving the integrity of elections is a compelling interest. Plaintiffs do not disagree. But Intervenors never actually address Plaintiffs’ arguments that the Absentee Ballot Organizing Ban is not related to (much less narrowly tailored to) achieving that goal

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<sup>1</sup> Plaintiffs maintain that the Court should apply strict scrutiny because the law requires prosecuting attorneys to “examine the content of the message that is conveyed to determine whether” the law—and, in particular, the solicitation ban—has been violated. *McCullen*, 573 U.S. at 479.

because, among other things, it regulates the application process (not ballot collection), there are alternative systems in place to preserve the integrity of absentee voting, and there are criminal laws that more directly involve tampering with a voter's efforts to vote absentee. ECF No. 59 at 37-40; *see also* Decl. of Courtney Elgart dated June 11, 2020, Exs. H, I.

Similarly, Intervenor, in arguing that the law is justifiable as a residency requirement (that is, a limit on application collection to Michigan residents), ignore that the law sweeps much more broadly than that; it prohibits the roughly 750,000 *Michiganders* who are eligible to register to vote but are not registered from assisting with absentee ballots, ECF No. 22-7 ¶ 6. In addition, the few highly isolated incidents of voter fraud cited by Intervenor in purported justification of the restrictions notably do not involve conduct occurring *in Michigan* or conduct that would be *actually covered* by the challenged law. ECF No. 70 at 22-25.<sup>2</sup>

Finally, a facial challenge is appropriate in this case because the Absentee Ballot Organizing Ban is unconstitutional in nearly all of its applications. *United States v. Stevens*, 559 U.S. 460, 472-73 (2010). While the law may capture some

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<sup>2</sup> For example, ballot collection itself is not at issue in this case. And the two incidents cited by Intervenor were related to ballot applications and would not have been captured by the Absentee Ballot Organizing Ban because one involved doctored applications and the other the conduct of a mail carrier, a category of persons exempted under Michigan's Law, Mich. Comp. Laws § 168.759(4). ECF No. 70 at 25.

quantum of coercive or fraudulent activity, that activity is already criminalized by other Michigan laws. *See, e.g.*, Mich. Comp. Laws § 168.932(a), and neither Intervenor nor Defendants have identified any other valid application of the law. Otherwise, the law merely functions as a burden on expressive conduct, i.e. absentee ballot application organizing.

### 3. *Preemption under Section 208 of the Voting Rights Act*

Finally, Plaintiffs are likely to succeed on their claim that the Absentee Ballot Organizing Ban is preempted by Section 208 of the Voting Rights Act (“VRA”). As an initial matter, Intervenor’s assertion that Plaintiffs lack standing to bring the VRA preemption claim is incorrect. “[T]he Supreme Court has permitted organizations to bring suit in VRA claims.” *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (citing *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 268-71 (2015)). And in *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), the Fifth Circuit found that an organization with a mission that is meaningfully indistinguishable from that of Plaintiff APRI had standing to seek declaratory and injunctive relief based on allegations that a state voting law was preempted by the VRA. *Compare id.* at 610-14 (finding standing for organization with mission of turning out vote in a community with limited English proficiency), *with* Decl. of A. Hunter dated June 12, 2020 ¶ 5 (describing APRI as organization with mission of turning out vote in communities with limited English proficiency).

and assisting individuals with disabilities). Indeed, the VRA was *intended* to confer standing to organizations like Plaintiffs. The legislative history clearly states that an aggrieved person “may be an individual *or an organization* representing the interests of injured persons.” S. Rep. No. 295, 94th Cong., 1st Sess. 1, 40 (1975), reprinted in 1975 U.S. Code Cong. & Admin. News 774, 806–07 (emphasis added). *Newman v. Voinovich*, 789 F. Supp. 1410, 1416 (S.D. Ohio 1992), *aff’d*, 986 F.2d 159 (6th Cir. 1993).<sup>3</sup>

On the merits, Plaintiffs are likely to succeed on their preemption claim because Section 208 guarantees that covered voters can choose who assists them in

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<sup>3</sup> If this Court holds that associational or prudential standing is necessary to assert a VRA claim, it should allow Plaintiffs to amend their complaint to reflect the facts in the attached affidavit, Hunter Decl., *supra*, which establish that APRI has both. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) (explaining that organization has associational standing if “its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit”); *Eisenstadt v. Baird*, 405 U.S. 438, 445 (1972) (finding sufficient relationship for prudential standing where litigant was an “advocate” for the rights of those on whose behalf he was litigating); *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2016 WL 3166251, at \*34 (S.D. Ohio June 7, 2016), *aff’d in part, rev’d in part*, 837 F.3d 612 (6th Cir. 2016) (finding a “close relationship” sufficient for prudential standing where organizations “regularly work with homeless individuals, advocate for their needs, connect them to necessary social services, and encourage their participation in civic life”); *id.* at \*35 (finding “hindrance” where individual right holders “often have difficulty navigating the court system, obtaining counsel, maintaining a consistent address and phone number, and obtaining ID that would allow them access to courtrooms, because they “suffer disproportionately from mental health problems, substance abuse, limited financial resources, and low levels of literacy and education”).



voting, and the Absentee Ballot Organizing Ban restricts that choice. ECF No. 59 at 42. In an effort to avoid this unavoidable contradiction, Intervenors graft new language on to the statute and conjure up farcical hypotheticals. But, as Intervenors concede, the purpose of Section 208 was to provide covered voters with assistance from persons whom the voters trust. Congress made the decision, as reflected in the plain language of Section 208, that this is best accomplished by allowing the *voters*, not the state, to choose who assists them with voting.

Finally, Intervenors argue, with tongue firmly in cheek, that fidelity to this policy choice by Congress is not possible lest the state be required to release an inmate from prison if a covered individual chooses to have that inmate assist them with voting. ECF No. 68 at 27. Without the State's ability to impose "reasonabl[e] restricti[ons]" on the individuals who can provide assistance, a parade of horrors will ensue. ECF. No. 68 at 27. Hardly. Plaintiffs do not argue that the State has an affirmative obligation to secure assistance from the person of a voter's choosing; instead, they argue merely that the State must get out of the way.<sup>4</sup>

## **B. Voter Transportation Ban**

### *1. Void-for-Vagueness*

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<sup>4</sup> The cases cited by Intervenors were in any event wrongly decided, and because they are nonbinding, should not influence this Court's decision regarding § 208's scope.

Plaintiffs are also likely to succeed on their claim that the Voter Transportation Ban is unconstitutionally vague. The point is perhaps best illustrated by Intervenor's own, very different opinions as to what is covered by the law, especially when contrasted with the state's own assertions. Indeed, even the Intervenor cannot agree among themselves as to what the law covers.

The Attorney General argued, among other things, that the Voter Transportation Ban covers only quid pro quo arrangements. ECF No. 30 at 45. The Legislature disputes the Attorney General's interpretation, instead taking the broadest possible position that the law "prohibits paying for others transportation to the polls." ECF No. 68 at 33. The Republican Organizations end up somewhere in the middle, arguing that the law only applies to providing hired transportation "for the purpose of" securing a voter's vote. ECF No. 70 at 43-44. When the body that wrote the law, the officer who enforces the law, and major political parties regulated by the law all come to a different conclusion about what it does and does not permit, this is the very definition of "vague."

## 2. *First Amendment*

Similarly, Plaintiffs are likely to succeed on their claim that the Voter Transportation Ban violates the First Amendment. Not only does the law burden rides-to-the-polls efforts, ECF No. 59 at 43; ECF No. 22-5 ¶ 13; ECF No. 22-6 ¶¶ 18, 20, 25; ECF No. 22-8 ¶¶ 5, 9, 10; ECF No. 22-1 at 31 n. 8; *see also* Elgart Decl..

*supra*, Ex. G at 3., it directly restricts political spending by setting a spending limit of \$0 on rides-to-the-polls efforts. Courts have long held that political spending is constitutionally protected activity subject to exacting scrutiny. ECF No. 59 at 43; *see Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976); *Emily's List v. FEC*, 581 F.3d 1, 17-18 (D.C. Cir. 2009). Intervenor's do not cite even a *single* political spending cases to the contrary. Not one.

And the Voter Transportation Ban cannot survive exacting scrutiny. The law is not tailored, much less narrowly tailored, to serve an anticorruption interest. *See Emily's List*, 581 F.3d at 18. While other laws in Michigan target corruption, Mich. Comp. Laws § 168.932(a), *id.* § 168.931(a), the Voter Transportation Ban does not. And neither Attorney General Nessel nor Intervenor's have cited any incidents of undue influence related to the provision of hired transportation.<sup>5</sup>

Intervenor's compare using arson laws to regulate fireworks with using the Voter Transportation Ban to target undue influence. ECF No. 68 at 34-35. While the

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<sup>5</sup> Intervenor's argue they should not be faulted for being unable to point to instances of voter fraud related to hired transportation because of how long the statute has been in effect, ECF No. 68 at 34, but also fail to cite examples of this type of fraud from outside of Michigan. Yet, as Plaintiffs have noted, Michigan is the *only* state that criminalizes hired transportation for voters. Intervenor's also criticize Plaintiffs for not citing case law that specifically states that paying for transportation is protected speech. ECF No. 70 at 40-41. But paying for transportation to assist voters in getting to the polls is *legal* under federal law and the law of the 49 other states; so it is not clear where or when the issue would have been litigated.

regulation of fireworks may prevent their use in burning down structures, fireworks are regulated in their own right because they are dangerous, unstable, and can injure their users. No such independent basis for regulation exists with regard to the Voter Transportation Ban. Simply put, the law serves no purpose outside decreasing the risk of undue influence that is fully captured by Michigan's other laws while sweeping in significant constitutionally protected expression within its prohibitions.

### 3. *Preemption under the Federal Election Campaign Act*

Plaintiffs are also likely to succeed on the merits of their claim that the Voter Transportation Ban is preempted by the Federal Election Campaign Act ("FECA"). FECA preempts the Transportation Ban—through both express and conflict preemption—because it “functions as a limitation on expenditures by criminalizing disbursements for providing transportation to the polls for all elections including federal elections.” ECF No. 59 at 50–51.<sup>6</sup>

Intervenors raise two threshold arguments—that this Court is an improper venue and that Plaintiffs lack a cause of action. They are wrong on both counts. First, this Court is a proper venue for Plaintiffs' preemption claim. While FECA does establish jurisdiction for challenges to Federal Election Commission agency actions

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<sup>6</sup> As the Court correctly noted in its order on Defendant's motion to dismiss, the relevant regulations that permit corporations to “provide” transportation arise “in the context of making ‘disbursements’ that is, spending money, to provide these services.” ECF No. 59 at 52.

in the District Court for the District of Columbia, 52 U.S.C. § 50109(a)(1), it has no such limitation for actions in equity bringing FECA preemption claims. Indeed, numerous courts across the country (including the Sixth Circuit) have decided FECA preemption claims over the years.<sup>7</sup> In *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994), for example, the sole cause of action was a FECA preemption claim brought in federal court in Kentucky to enjoin the enforcement of a Kentucky law. The Sixth Circuit held both that the district court had subject matter jurisdiction to hear the single-claim case *and* that FECA preempted state law. *Id.* at 1011–13.

Second, Plaintiffs properly brought an action in equity to enforce FECA. Federal courts regularly hear preemption claims in equity, and their equitable power “to enjoin unlawful executive action is subject to express and implied statutory limitations.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). As the Supreme Court has “long recognized, if an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted.” *Id.* at 326 (*citing Ex parte Young*, 209 U.S. 123, 155–156 (1908)).

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<sup>7</sup> *E.g.*, *Stern v. Gen. Elec. Co.*, 924 F.2d 472, 475 (2d Cir. 1991) (exercising jurisdiction over a FECA preemption claim); *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996) (same); *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543, 545 (8th Cir. 1984) (same); *Weber v. Heaney*, 793 F. Supp. 1438, 1442 (D. Minn. 1992), *aff'd*, 995 F.2d 872 (8th Cir. 1993) (same).

Intervenors' reliance on *Armstrong* is simply misplaced. ECF No. 70 at 46. In *Armstrong*, the Supreme Court held that although the *Supremacy Clause* does not create a cause of action, 575 U.S. at 325, federal courts have equitable power to "enforce federal law" unless Congress has "displaced" that power. *Id.* at 329. The Court held that such a displacement of equitable power had taken place in *Armstrong*, but no such displacement has taken place here. To the contrary, Congress has sanctioned federal courts' equitable power to enjoin conflicting state law by including an express preemption provision in the statute. 52 U.S.C. § 453.

Intervenors also argue that FECA does not preempt the Voter Transportation Ban, relying on the "voting fraud" carveout in 11 C.F.R. § 108.7(c)(4) which provides that FECA "does not supersede State laws" that provide for "[p]rohibition of false registration, voting fraud, theft of ballots, and similar offenses." ECF No. 68 at 39; ECF No. 70 at 50. But of course the Voter Transportation Ban is, in no way, tied to the prevention of voting fraud. It does not even criminalize the transportation of voters to the polls; it criminalizes *spending money to transport voters to polls*, which is expressly permitted by FECA regulations.

Intervenors' invocation of *Dewald v. Wriggelsworth*, 748 F.3d 295 (6th Cir. 2014), is similarly misguided. The Sixth Circuit did not squarely address the question of FECA preemption in *Dewald*; instead it addressed whether the stringent standards of AEDPA were met. *See id.* at 301. Accordingly, the habeas petitioner in

that case was required to prove that it was clearly established law that FECA preempted Michigan's common-law fraud and theft statutes as applied to his case at the time he was convicted. Here, by contrast, the court must determine whether FECA preempts the Transportation Ban now, not whether it clearly did so at some point in the past.

**C. Abstention is not warranted.**

Intervenors' last-ditch arguments that Plaintiffs' vagueness challenges to the Absentee Ballot Organizing Ban and Voter Transportation Ban should cause the Court to abstain under the *Pullman* doctrine simply cannot be supported. Abstention is the rare exception, not the rule. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). This is particularly true in cases involving facial challenges based on the First Amendment, such as Plaintiffs' challenges to the Absentee Ballot Organizing Ban and Voter Transportation Ban. *See, e.g., City of Houston v. Hill*, 482 U.S. 451, 467 (1987); *Dombrowski v. Pfister*, 380 U.S. 479, 489-90 (1965) (“[A]bstention . . . is inappropriate for cases [where] . . . statutes are justifiably attacked on their face as abridging free expression.”). “In such case[s] to force the plaintiff who has commenced a federal action to suffer the delay of state-court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect.” *Hill*, 482 U.S. at 467-68 (alteration in

original) (quoting *Zwickler v. Koota*, 389 U.S. 241, 252 (1967)). Intervenor's cite no basis for taking this extraordinary action here.

Further, neither Ban is “fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question,” the question that the Supreme Court has described as “pivotal . . . in determining whether abstention is appropriate.” *Id.* at 468 (quoting *Harman v. Forssenius*, 380 U.S. 528, 534-35 (1965)). In other words, unless there is a limiting construction that would affect a state statute’s constitutionality, there is no reason for a federal court to abstain from exercising jurisdiction—even if the state statute has not yet been interpreted by state courts. *Id.* (internal citations omitted). Here, however, the Attorney General proposes one construction of the Voter Transportation Ban that is at odds with the statute’s plain text, ECF No. 30 at 37-39, *Hill*, 482 U.S. at 468 n. 18, and Intervenor's do not offer their own construction or adopt the Attorney General’s. None of the Defendants offer a limiting construction of the Absentee Ballot Organizing Ban.

Intervenor's’ argument for abstention here is effectively to say that *every* vagueness challenge to a state law in federal court is subject to abstention because, by nature of the challenge itself, the statute at issue has ambiguities that could be clarified in the first instance by state courts. Such a broad reading of the abstention doctrine is contrary to the very purpose of the vagueness doctrine. After all, “to



abstain is to subject those affected to the uncertainties and vagaries of criminal prosecution, whereas the reasons for the vagueness doctrine in the area of expression demand no less than freedom from prosecution prior to a construction adequate to save the statute.” *Dombrowski*, 380 U.S. at 492.

## **II. The equitable considerations favor granting an injunction.**

Intervenors deploy a number of creative, but unsupported, arguments that boil down to an assertion that Plaintiffs should be required to go through this election cycle deprived of their constitutionally guaranteed rights to fully participate in and exercise their speech related to that election. Intervenors are wrong. “[T]he public interest is served by preventing the violation of constitutional rights.” *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004).

This lawsuit—which was filed a full year before the coming November election—is timely; Intervenors’ arguments to the contrary are without merit. *First*, Intervenors argue that Plaintiffs waited too long to bring the lawsuit because the challenged laws are not newly enacted laws. ECF No. 68 at 41; ECF No. 70 at 55. But, as the Court already found, the laws have taken on a new impact given recent changes to technology and Michigan’s election regime. ECF No. 59 at 22. Even beyond that, Plaintiffs have not sat on *their rights*. Priorities and Rise both expanded their presence in Michigan in 2019, and, as Intervenors acknowledged, filed this

lawsuit the very same year. *See* ECF No. 22-6 ¶ 4; Elgart Decl., *supra*, Ex. F. *Second*, Intervenor argue that it is too close to the November election to issue the requested relief. But the challenged laws do not require *any* structural changes to the way the state prints or distributes ballots. Furthermore, the motion for injunction is fully briefed and it remains well before the period of time where courts have abstained from injunctions based on timeliness concerns. *See, e.g., Bryanton v. Johnson*, 902 F. Supp. 2d 983 (E.D. Mich. 2012) (enjoining inclusion of a citizenship verification question on absentee ballot and voter registration applications four weeks before election); *U.S. Student Ass'n Found. v. Land*, 585 F. Supp. 2d 925 (E.D. Mich. Oct. 13, 2008) (prohibiting cancellation/rejection of voter registrations three weeks before election); *Bay Cty. Democratic Party v. Land*, 347 F. Supp. 2d 404 (E.D. Mich. 2004) (enjoining rejection of out-of-precinct provisional ballots cast in federal elections two weeks before election); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (affirming injunction five weeks before election).

Intervenor also argue that Plaintiffs will not suffer irreparable injury because the Secretary sent absentee ballot applications to voters. While this decision is laudable in that it alleviates the burden on voters to obtain absentee ballot applications, it does not alleviate the burden on Plaintiffs' expressive activities.

Plaintiffs are still prohibited from distributing and returning applications, requesting to do so, and from paying for hired transportation.<sup>8</sup>

In short, this Court has already held that the Absentee Ballot Organizing Ban and the Voter Transportation Ban are subject to scrutiny under the First Amendment, and conflict with federal law. Intervenor offers no persuasive reasons this Court should reverse course. And the robust evidentiary record filed with the request for injunction supports a final resolution in Plaintiffs' favor. Accordingly, Plaintiffs respectfully urge the Court to enter the requested injunction, ensuring that Plaintiffs' rights—and the rights of all Michiganders—are protected in advance of the November Election.

Dated: June 12, 2020

Respectfully submitted,

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<sup>8</sup> Michigan law criminalizes every violation of the Election Code, Mich. Comp. Laws § 168.931(2), including, obviously, hiring transportation for a voter, *id.* § 168.931(f), and including a false statement on the certification a third party must fill out to return an absentee ballot application, *id.* § 168.759(8); *see also id.* § 168.759(5) (“It is a violation of Michigan election law for a person other than those listed in the instructions to return, offer to return, agree to return, or solicit to return your absent voter ballot application to the clerk.”).

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### **CERTIFICATE OF SERVICE**

I hereby certify that on June 12, 2020, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

### **LOCAL RULE CERTIFICATION**

I, Marc Elias, certify that this document and complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that I have filed a motion seeking an extension on the word limit contained in Local Rule 7.1 for good cause.

Respectfully submitted,

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**Index of Exhibits**

<b>Exhibit #</b>	<b>Description</b>
<b>A</b>	Declaration of Andrea Hunter in Support of Plaintiffs' Motion for a Preliminary and Permanent Injunction
<b>B</b>	Instagram posts created by @apridetroitdownriver
<b>C</b>	"ABOUT US" page of APRI's website
<b>D</b>	"OUR IMPACT" page of APRI's website
<b>E</b>	"HOW WE WORK" page of Rise, Inc.'s website
<b>F</b>	Press Release, "Priorities USA Launches Priorities Michigan" dated July 18, 2020
<b>G</b>	Ayesha Rascoe, "In Final Stretch, Groups Work to Get Young People, Minorities to the Polls," NPR (Nov. 2, 2018)
<b>H</b>	Miles Parks, "Why is Voting By Mail (Suddenly) Controversial? Here's What You Need to Know," NPR (June 4, 2020)
<b>I</b>	"Dirty Tricks: Eight Falsehoods that Could Undermine the 2020 Election," Brennan Center (May 14, 2020)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

Priorities USA, Rise, Inc., and the  
Detroit/Downriver Chapter of the A.  
Philip Randolph Institute,

Plaintiffs,

v.

Dana Nessel, in her official capacity as  
Attorney General of the State of  
Michigan,

Defendant,

and

Republican National Committee, Michigan  
Republican Party, Michigan House of  
Representatives, and Michigan Senate,

Intervenor- Defendants.

NO. 19-13341

JUDGE STEPHANIE DAWKINS  
DAVIS

MAGISTRATE JUDGE R.  
STEVEN WHALEN

**REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A  
PRELIMINARY AND  
PERMANENT INJUNCTION**

I, Courtney A. Elgart, declare as follows:

1. I am over the age of 18 and am competent to make this declaration. I am an attorney with the law firm of Perkins Coie, LLP and am admitted to practice law in the District of Columbia, Massachusetts, and the Eastern District of Michigan. I am an attorney for Plaintiffs. I submit this declaration to provide the Court true and correct copies of certain documents submitted in connection with Plaintiffs' Motion for Preliminary and Permanent Injunction.

2. Exhibit A is a true and correct copy of the declaration of Andrea Hunter dated June 12, 2020.

3. Exhibit B is a true and correct copy of Instagram posts created by @apridetroitdownriver, available at <https://www.instagram.com/apridetroitdownriver/> (accessed June 11, 2020).

4. Exhibit C is a true and correct copy of the “ABOUT US” page of APRI’s website, available at <http://www.apridetroitdownriver.org/about-us> (accessed June 11, 2020).

5. Exhibit D is a true and correct copy of the “OUR IMPACT” page of APRI’s website, available at <http://www.apridetroitdownriver.org/our-impact> (accessed June 11, 2020).

6. Exhibit E is a true and correct copy of the “HOW WE WORK” page of Rise, Inc.’s website, available at <https://risefree.org/how-we-work/> (accessed June 11, 2020).

7. Exhibit F is a true and correct copy of the Press Release, “Priorities USA Launches Priorities Michigan” dated July 18, 2020, available at <https://priorities.org/press/priorities-usa-launches-priorities-michigan/> (accessed June 11, 2020).

8. Exhibit G is a true and correct copy of Ayesha Rascoe, “In Final Stretch, Groups Work to Get Young People, Minorities to the Polls,” NPR (Nov. 2,



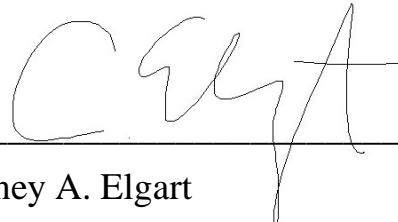
2018), available at <https://www.npr.org/2018/11/02/662273990/in-final-stretch-groups-work-to-get-young-people-minorities-to-the-polls> (accessed June 11, 2020).

9. Exhibit H is a true and correct copy of Miles Parks, “Why is Voting By Mail (Suddenly) Controversial? Here’s What You Need to Know,” NPR (June 4, 2020), available at <https://www.npr.org/2020/06/04/864899178/why-is-voting-by-mail-suddenly-controversial-heres-what-you-need-to-know> (accessed June 11, 2020).

10. Exhibit I is a true and correct copy of Max Feldman, “Dirty Tricks: Eight Falsehoods that Could Undermine the 2020 Election,” Brennan Center (May 14, 2020), available at <https://www.brennancenter.org/our-work/research-reports/dirty-tricks-eight-falsehoods-could-undermine-2020-election> (accessed June 11, 2020).

I certify under penalty of perjury and pursuant to the laws of the United States that the preceding is true and correct.

Executed on 6/12/20

By:   
Courtney A. Elgart

# Exhibit A

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

Priorities USA, Rise, Inc., and the  
Detroit/Downriver Chapter of the A.  
Philip Randolph Institute,

Plaintiffs,

v.

Dana Nessel, in her official capacity as  
Attorney General of the State of  
Michigan,

Defendant,

and

Republican National Committee,  
Michigan Republican Party, Michigan  
House of Representatives, and Michigan  
Senate,

Intervenor- Defendants.

NO. 19-13341

JUDGE STEPHANIE DAWKINS  
DAVIS

MAGISTRATE JUDGE R.  
STEVEN WHALEN

**DECLARATION OF ANDREA  
HUNTER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A  
PRELIMINARY AND  
PERMANENT INJUNCTION**

I, Andrea Hunter, declare as follows:

1. My name is Andrea Hunter. I am currently the President of the A. Philip Randolph Institute's Detroit/Downriver Chapter, as well as President of United Steelworkers Local 1299.

2. The A. Philip Randolph Institute (APRI) is the senior constituency group of the AFL-CIO. APRI was founded in 1965 by A. Philip Randolph and

Bayard Rustin to fight for human equality and economic justice and to seek structural changes through the American democratic process. The Detroit/Downriver Chapter of APRI serves the Downriver and Detroit areas of Michigan.

3. The Detroit/Downriver Chapter of APRI formed in June 2012 and now has 78 members, the majority of whom are people of color, who typically meet on a monthly basis. Its Executive Board, which voted to join this litigation, is made up of 9 members.

4. When APRI members conduct voter engagement work, we are not only facilitating individuals' access to the ballot, but also expressing to people in our community that voting is an important way to make positive change. Since the Detroit/Downriver Chapter of APRI formed eight years ago, we have built a reputation for spreading the message of encouraging civic participation. When we provide rides to the polls or assistance with absentee voting, we intend to convey that voting is important to us and that it should be to our community as well.

5. Part of APRI's mission is to turn out voters across Detroit and Downriver, especially voters who may not vote without APRI's assistance. Therefore, APRI regularly works with and advocates for the needs of individuals with disabilities and individuals with limited English proficiency. Because APRI is

well known and has roots in the community, voters trust APRI to provide assistance with voting, and the same voters return to seek assistance from year to year.

6. Some of APRI's members themselves have disabilities and rely on APRI for assistance in voting. One of our dues-paying members, Cameron Randolph, is autistic and depends on APRI to take him to and from the polls. He is not able to catch the bus because he gets disorientated, cannot drive due to his disabilities, and has trouble navigating ride-share apps. He cannot vote absentee because he would need assistance from APRI to request a ballot. APRI brings this lawsuit on behalf of Mr. Randolph and all of our dues-paying members with disabilities who rely on APRI for assistance with voting.

7. We also have relationships with individuals outside our membership who have disabilities. Many of them cannot get themselves to the polls to vote in person because they are physically unable to drive themselves or because they do not have convenient access to public transportation. Therefore, they rely on APRI for rides to the polls. They would rely on APRI for assistance with requesting an absentee ballot if such assistance were legal.

8. APRI also provides ongoing assistance to individuals with limited English proficiency in the large Spanish- and Arabic- speaking populations in our community. With regard to voting specifically, these individuals face significant barriers that we attempt to break down by offering information about voting in their

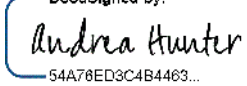
native languages—through voter education campaigns, voter registration efforts, traditional get-out-the-vote activities like phone banking and knocking on doors, and connecting voters to translation services at the polls on Election Day.

9. Due to APRI's existing relationships with individual voters in the community, many of whom have limited English proficiency or have disabilities, such individuals rely on APRI to advocate for their needs, connect them to relevant services, and facilitate their civic participation. It is based on these relationships, in addition to protecting its ability to continue its work, that APRI brings this lawsuit.

10. Many of the voters that APRI serves are some of the most vulnerable individuals in the community, and they suffer disproportionately from limited financial resources and time as well as low levels of English literacy and education. Because of these challenges, they face practical obstacles to bringing lawsuits on their own and rely on APRI to advocate for their interests.

I certify under penalty of perjury and pursuant to the laws of the United States that the preceding is true and correct.

Executed on June <sup>11</sup>\_\_\_\_, 2020.

DocuSigned by:  
By:   
54A78ED3C4B4463...  
Andrea Hunter/President  
Detroit/Downriver A. Philip Randolph Institute

# Exhibit B



GET A FREE

## RIDE TO THE POLLS

ELECTION DAY, NOVEMBER 7, 2017

7:00am - 8:00pm

**CWA LOCAL 4100  
2441 W GRAND BLVD  
DETROIT, MI 48208**

**Register for a ride at:  
[www.apridetroitdownriver.org](http://www.apridetroitdownriver.org)**

*[If registering online, please register by 11/6 to ensure your ride.]*

**or  
(313)613-8539 or (313)415-3442**  
*[In advance or day of.]*

**MORE INFO: [INFO@DETROITDOWNRIVER.ORG](mailto:INFO@DETROITDOWNRIVER.ORG)**

 **@APRIDETROITDOWNRIVER**



apridetroitdownriver • Follow



apridetroitdownriver Tomorrow is Election Day! Make sure you have a way to get there and make your voice heard.  
Share. Share. Share.

FACT: We run background checks on all of our drivers (even if they are chapter members) and each car has two people (1 male and 1 female). We want our members and passengers to be safe at all times!

135w



apridetroitdownriver #detroit  
#electionday  
#detroitelection2017  
#Detroitelections  
#ridetothepolls



1 like

NOVEMBER 6, 2017

Add a comment...






\*\*\*


137w




OCTOBER 24, 2017



 **apridetroitdownriver** • Follow ...

 **apridetroitdownriver** We're still driving people to the polls! Call us at 313-334-1063 before 7:30pm to make sure you can cast your vote!! #electionday #ridetothepolls

187w

 **apridetroitdownriver** .

#detroitdownriverapri #ddapri #GOTVdetroit #detroit #GOTV #aphiliprandolph #aphiliprandolphinstitute

23 likes

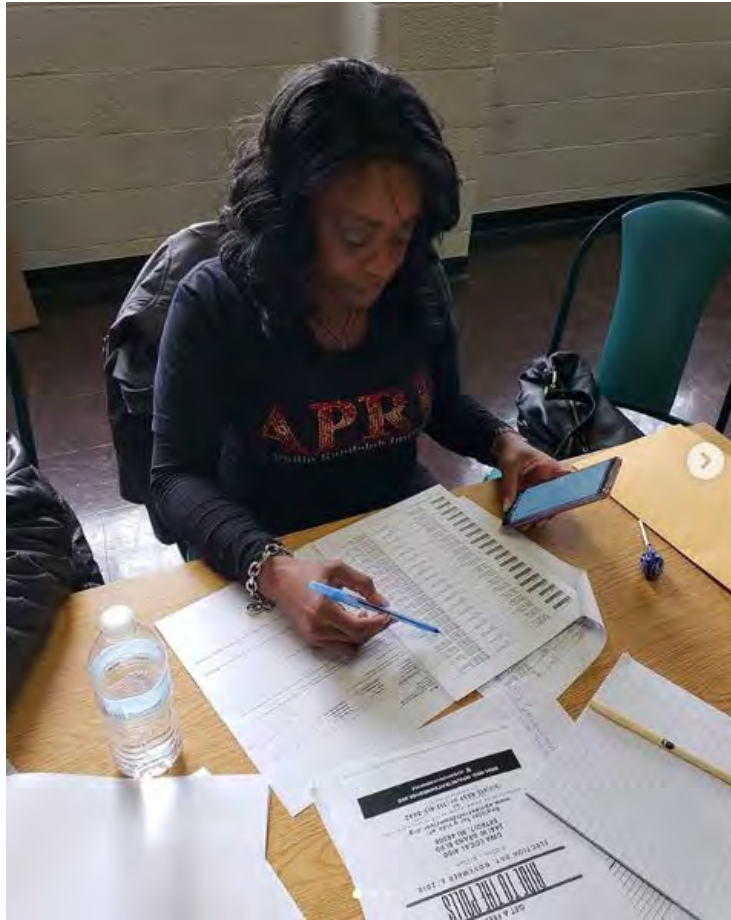
NOVEMBER 8, 2016

Add a comment...

Post







apridetroitdownriver • [Follow](#)



apridetroitdownriver Phone banking action happening all weekend to ensure our community can make it to the polls on Tuesday. Free rides this way!! #detroitdownriverapri #detroitvotes #vote #ridetothepolls

83w



7 likes

NOVEMBER 3, 2018

Add a comment...

[Post](#)





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apridetroitdownriver Our Chapter President taking calls for rides! If you need a ride to the polls check out our previous post.  
[#detroitlectionday](#) [#electionday](#)  
[#detroit](#)

135w



6 likes

NOVEMBER 7, 2017

Add a comment...

[Post](#)



 **apridetroitdownriver** • [Follow](#) ...

 **apridetroitdownriver** Chapter President Andrea with her youngest daughter/chapter member/ FIRST TIME VOTER Cari. Still time to call us for a ride to the polls. Check out our previous posts for phone numbers to call for a ride. Try to call before 7:30 to make sure you can make it to the polls. Don't complain tomorrow about something you can change today!!  
[#ridetothepolls](#) [#electionday](#) [#detroit](#)

**26 likes**

NOVEMBER 8, 2016

Add a comment... [Post](#)



aapidetroitdownriver • [Follow](#)



aapidetroitdownriver Yes! Nothing beats the feeling of making a difference in the community. First time voter... registered and ready to make a difference. || Last day to register to vote in Michigan is October 11th. This election is too important to not let your voice be heard. If you or someone you know owns a local business and wouldn't mind us camping out to register voters feel free to tag yourself/them, shoot us a dm, or email us at [detroitdownriverapri\[at\]gmail.com](mailto:detroitdownriverapri[at]gmail.com). We look forward to working together to make our community strong. #ddapri

195w



aapidetroitdownriver



9 likes

SEPTEMBER 13, 2016

Add a comment...

[View](#)







apringetroitdownriver • Follow ...



apringetroitdownriver Here for it!  
Make sure you're registered to vote!

We'll be at Wayne State in the Student  
Center Building outside of Hillberry F  
until 7pm.

#nvrd #voteready  
#detroitdownriverapri #detroit

37w



3 likes

SEPTEMBER 24, 2019

Add a comment...

Post



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 **apridetroitdownriver** Our chapter member Carl Baxter registering voters at Marygroce College today!

112w

 **apridetroitdownriver** . ♡

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♡ ◻ ◻ ◻

**9 likes**

APRIL 14, 2018

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Add a comment... Post



apringetroitdownriver • [Follow](#)



apringetroitdownriver "Detroit Downriver APRI along with LIUNA Local 1191 Brothers & Sisters sharing the 1st part of their Thanksgiving by giving back.

No brag, no boast JUST awareness; LABOR UNIONS CARE FOR OUR COMMUNITIES (this is just one example)." -Aletha Smith, Chapter Treasurer

#DDAPRI #thanksgiving  
#thanksgivingcommunityoutreach  
#detroit #detroitdownriverapri

27w



2 likes

NOVEMBER 29, 2019

Add a comment...

Post





apridetroitdownriver • Follow



Boxes of Love delivery! Given goods for holiday meals to those in need. We delivered 350 turkey's! Way to go teams!

181w



apridetroitdownriver .



#detroitdownriverapri #ddapri  
#detroit #aphilprandolph  
#aphilprandolphinstitute  
#michigan #communityfirst  
#communityoutreach



16 likes

DECEMBER 18, 2016

Add a comment...

Post



apridetroitdownriver • Follow



We'll be helping out again tomorrow... come join us!! Every Sunday chapter members pair up Project Dignity to feed and clothe the homeless. Food and clothing donations are always appreciated. Every Sunday at 1:30pm Weekly Feeding the Less Fortunate NSO (Neighborhood Services Organization) 3430 3rd St. Detroit, MI. #ddapri #projectdignity



11 likes

SEPTEMBER 17, 2016

Add a comment...



# Exhibit C



**"Freedom  
is never  
given; it is  
won."**



A. PHILIP RANDOLPH | CO-FOUNDER





Economic Justice, and to seek structural changes through the American Democratic process. Our members are involved in voter registration, political and community education, lobbying, legislative action and labor support activities.

## GOALS

Our goal is to enhance the participation of the members of our community in society as a whole through education and comradery.

01.	02.	03.	04.
-	-	-	-
Educating our community on the different political, social, human, economic	Providing job skill set for employment of ALL members of our community. Ex-	Providing food, clothing and nutritious education for those in need.	Through teaching self-worth by assisting someone with employment



will victims, focus help  
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 life. We training basic dency,  
 are to survival suicide  
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 s. and  
 thrive  
 in  
 society.



**"The truth  
that one  
truly  
believes in  
is action."**

BAYARD RUSTIN | CO-FOUNDER



The A. Philip Randolph Institute (APRI) was established by co-founders A. Philip Randolph and Bayard Rustin in 1965 shortly after the signing of the Voter Rights Act 1965. APRI is the senior constituency group of the AFL-CIO and host over 100 chapters throughout the United States. Once deemed by the FBI as the most dangerous black man in America, A. Philip Randolph is credited with organizing and initiating the 1964 March on Washington for Jobs and Freedom, one of the most iconic and largest political rallies for human rights in United States history.

LEARN MORE ABOUT  
A. PHILIP  
RANDOLPH

LEARN MORE ABOUT  
BAYARD RUSTIN





JOIN TODAY

# Donate



FOLLOW US ON INSTAGRAM:

**@APRIDETROITDOWNRIVER**

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address to receive news and  
updates.



Email Address

SIGN UP

we respect your privacy.

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All images Copyright A. Philip Randolph Institute Detroit/Downriver  
Chapter.

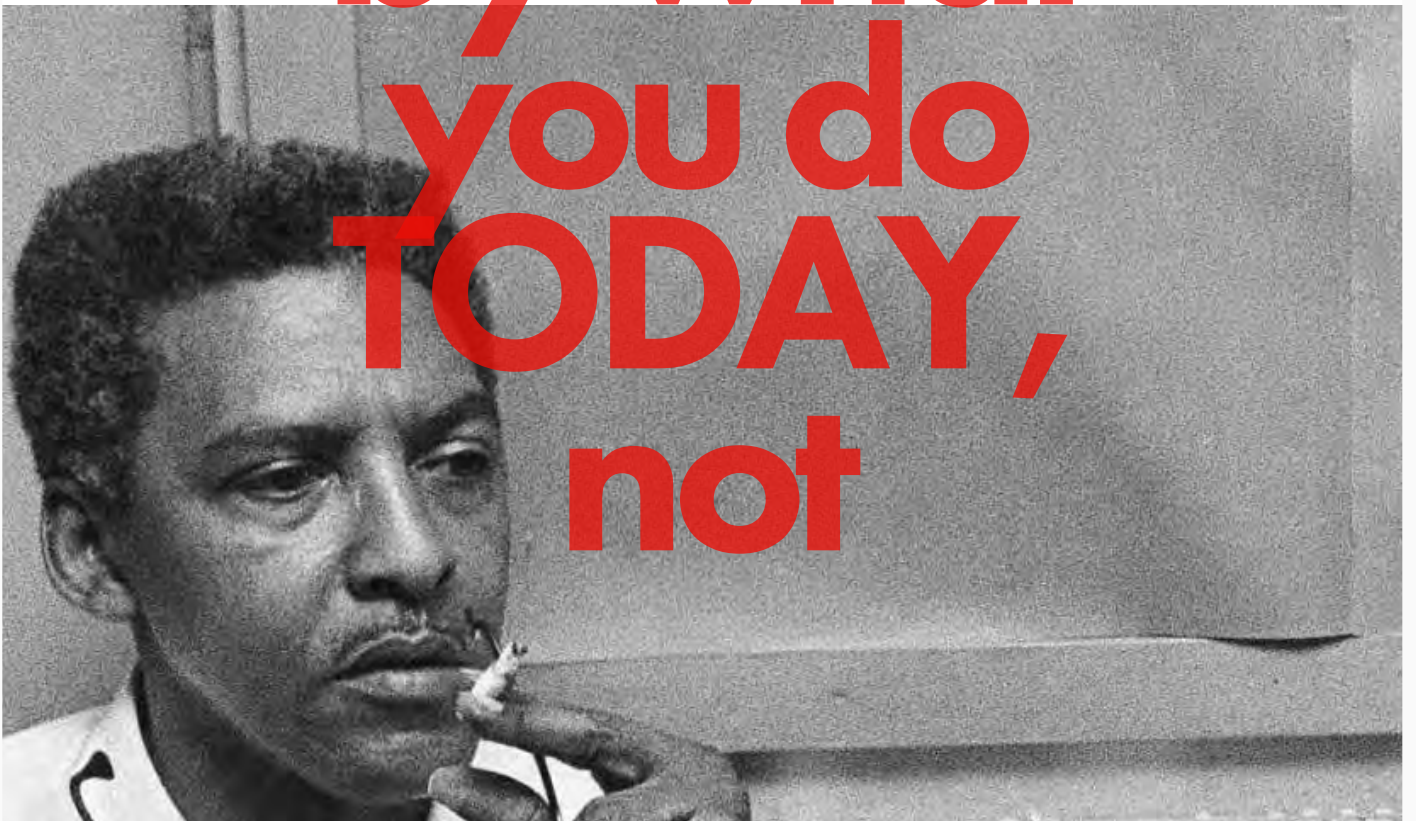


# Exhibit D





**"The  
FUTURE is  
CREATED  
by what  
you do  
TODAY,  
not**





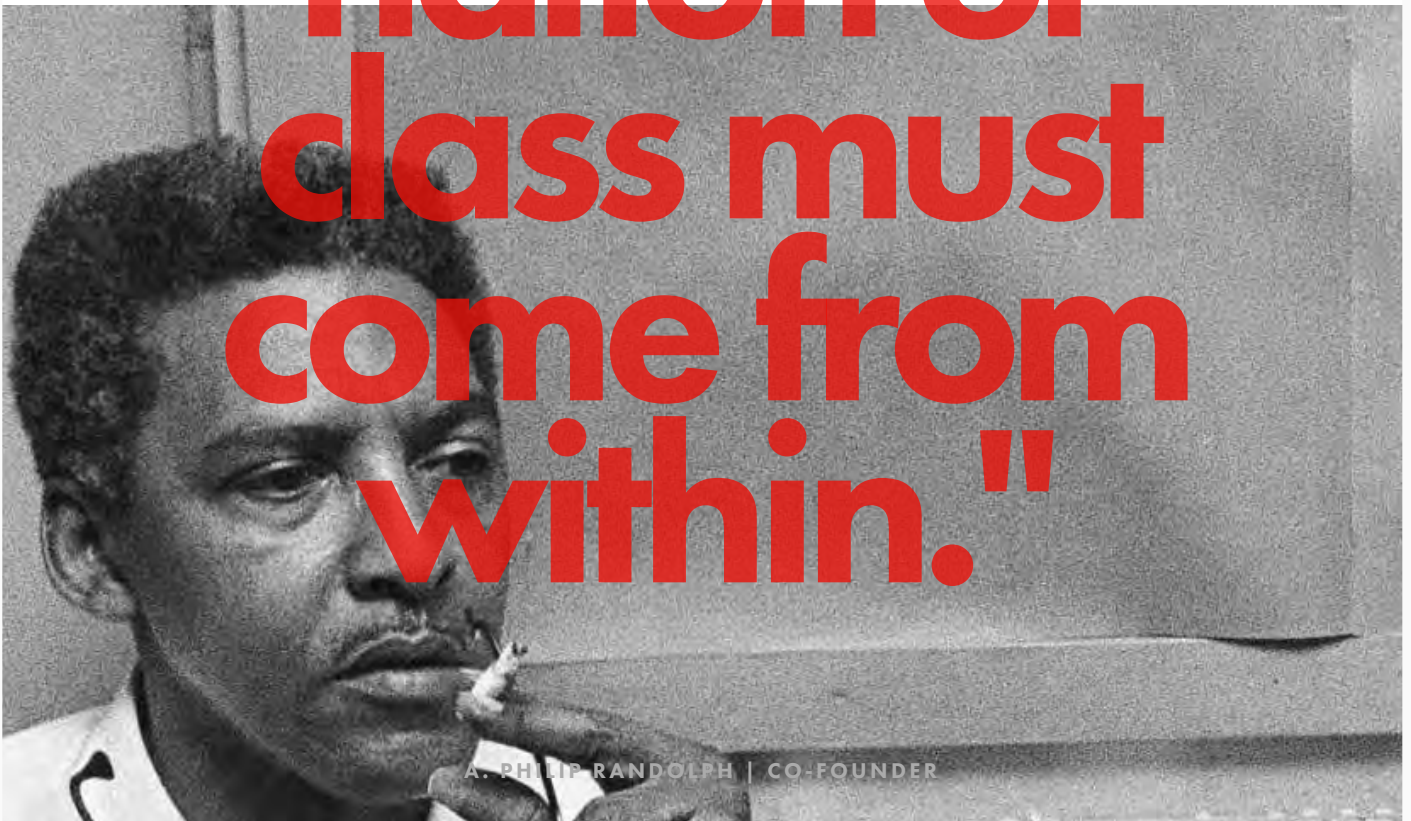


## WHAT WE DO...

The Detroit/Downriver Chapter has established a close relationship with those in our communities. We feed, clothe and educate those in our neighborhoods; because we are well aware if an individuals basic needs are not met, how can they even think about engaging in their community. Through our Detroit/Downriver APRI Youth Chapter we educate, guide and nurture future community leaders. Our chapter's GOTV initiatives enhances community involvement by mobilizing, motivating and educating our citizens on issues which affect



**"Salvation  
for a race,  
nation or  
class must  
come from  
within."**



A. PHILIP RANDOLPH | CO-FOUNDER



# DONATIONS ARE ALWAYS NEEDED AND APPRECIATED...

Donations go towards our many community endeavors. Our Project R.O.C.K (Rebuilding Our Communities Kick-Off) Program is a program where we feed and clothe the community. Project R.O.C.K also assists children out of Foster care going into adulthood, ex-felons, domestic violence victims etc. with employment interview skills, attire and grooming needs for a job interview.

Funds are also utilized for GOTV, literature, gas, and refreshments for community education and development.





## BE IN THE KNOW

Sign up with your email  
address to receive news and  
updates.

SIGN UP

we respect your privacy.




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All images Copyright A. Philip Randolph Institute Detroit/Downriver  
Chapter.

# Exhibit E

## HOW WE WORK

Rise builds student-led advocacy campaigns for policies that put higher education within reach for all. We also convene and train student leaders to advocate for college affordability policies through our Camp Rise series—a day-long training summit for college student leaders. Our north star goal is restoring state and federal funding for public higher education to make public colleges and universities free for all students. That means:

-  Free tuition and fees to expand access to public higher education.
-  Financial aid and campus resources to ensure students' basic needs are met while in college.
-  Support to thrive in college and graduate on time with little or no debt.

Rise campaigns are led by our (paid) Student Organizing Fellows, campus partners, and community of supporters. Our past and current campaigns include:

**Past:**

- ✓ 1 Year of Free Community College for First-time, Full-time Students in California
- ✓ Stop California State University and University of California Tuition Hikes and Win Hundreds of Millions of Dollars in New State Funding for Students in 2018
- ✓ Mobilize Thousands of Student Voters in November, 2018
- ✓ Two Years of Free Community College for First-Time, Full-Time Students

**Current:**

- Two Years of Free Community College, and Michigan Reconnect Program
- California Financial Aid Reform and Expansion
- LA2050: Ending College Student Hunger and Homelessness Through Student Advocacy





## SUPPORT RISE TODAY

Students' advocacy depends on supports like you stepping up  
to power this movement.

**Donate to Rise to support our students today.**

**\$5**

**\$20**

**\$35**

**\$100**

**\$500**

**\$1000**

**DONATE NOW ►**





(<https://risefree.org>)

**DONATE (/GO/DONATE/)**

**SIGN UP (/GO/JOIN/)**

**CONTACT US ([HTTPS://RISEFREE.ORG/CONTACT-US/](https://risefree.org/contact-us/))**

**PRIVACY POLICY ([HTTPS://RISEFREE.ORG/PRIVACY-POLICY/](https://risefree.org/privacy-policy/))**

**f (<https://www.facebook.com/RiseFreeOrg/>)**

**🐦 (<https://twitter.com/risefreeorg>)**

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Select Language ▼

Paid for By Rise, Inc. A 501(c)4 nonprofit organization.

Built by **Veracity Media** (<http://veracitymedia.com>)

# Exhibit F



July 18, 2019 | Press Release

## Priorities USA Launches Priorities Michigan

Today, Priorities USA is launching Priorities Michigan, one of the four entities in its new battleground state communications program. The program, which will combine press and digital communications operations to push back against Trump's false narratives, comes as part of Priorities USA's previously announced \$100 million investment in key states including Florida, Michigan, Pennsylvania, and Wisconsin.

The in-state Michigan team will work with local organizations to collect and capture stories from people and families who have felt the negative impact of living under Trump's economy. The team will distribute content to voters on the platforms where they get their news and information. This will include creating original content for social media and amplifying stories and data across local media outlets. Work on the ground will also support and inform Priorities' national work and paid media program, informing messaging and creative.

"Trump may try to brag about how the economy's great and everyone's prospering, but here in Michigan, voters know that couldn't be further from the truth. The reality is Michigan workers are losing their jobs, health care costs are rising, and paying the monthly bills is a challenge," **said Guy Cecil, Chairman of Priorities USA.** "Trump has shown time and time again that he's not looking out for Michigan families. He's only looking out for corporate profits; his tax break for auto manufacturers that turn around and lay off their workers is only one example. Michigan will be a crucial state in 2020, and our team will be on the front lines telling the real stories caused by Trump's policies, not Trump's lies."

Trump's broken promises are hurting Michigan workers.

- Since taking office, Trump promised that he'd bring auto industry jobs back, but General Motors **has laid off over 2,000** Michigan auto workers in the past year despite **getting** a \$157 million tax break from Trump's policies.
- Over a quarter of Michigan households **aren't able** to afford basic necessities, and Trump's economic plans are only making matters worse.



Trump's coverage of the Affordable Care Act has caused health care premiums to increase by nearly \$1,600, while also endangering health care coverage for as many as 4.1 million Michiganders.

Priorities Michigan's growing team will include:

**Zack Smith, serving as Content Producer.** Zack will collect personal stories about the harmful impacts of Trump's policies and work with local partners to reach voters with these stories. Before joining Priorities, Zack was a Communications Organizer with For Our Future Michigan, and prior to that, he worked as an adjunct professor at several Michigan colleges and prisons. He got his start in politics on the 2008 Obama campaign as a field organizer.

This program comes as part of Priorities USA's transition into the 2020 presidential cycle. This also includes a new program to provide partners with in-depth modeling, targeting, and opinion research for digital, TV, mail and field programs; continued efforts to train progressive operatives in understanding, planning, and executing digital campaigns; as well as a strong focus on both persuading moveable voters and mobilizing the Democratic base.



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For questions about Priorities USA, please email [info@priorities.org](mailto:info@priorities.org).

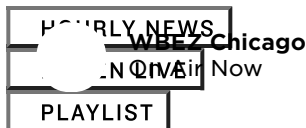
For press inquiries, please email [press@priorities.org](mailto:press@priorities.org). To subscribe to the press list, [click here](#).



Paid for by Priorities USA.

Site by Wide Eye Creative

# Exhibit G



WBEZ91.5  
CHICAGO'S NEWSTATION

DONATE



## ELECTIONS

# In Final Stretch, Groups Work To Get Young People, Minorities To The Polls

November 2, 2018 · 5:00 AM ET



AYESHA RASCOE



Georgia voters and supporters dance and sing during a "Souls to The Polls" march hosted by Democratic Georgia gubernatorial candidate Stacey Abrams in downtown Atlanta on Oct. 28. Alongside artist Common and Ambassador Andrew Young, Abrams marched with voters to a polling station in downtown Atlanta.

Jessica McGowan/Getty Images

## Updated at 12:30 p.m. ET

In the final days ahead of potentially pivotal midterm elections, activists are working to get voters to the polls who ordinarily might not show up when the presidency doesn't hang in the balance.

Donors have poured millions of dollars into efforts to turn out more African-Americans, Hispanics and young people for the 2018 elections.

With early voting under way in many states, there are signs that these efforts may be paying off.



#### POLITICS

Trump Denies 'Fearmongering' With Immigration Rhetoric Ahead Of The Election

"We're seeing indications that younger people, persons of color are voting at higher rates relative to 2014," said Michael McDonald, a political science professor at the University of Florida.

McDonald pointed to the race for Georgia governor as an example. He said the campaign for Democratic candidate Stacey Abrams had focused heavily on getting African-Americans and other likely supporters to vote early by mail.

"We could actually see that African-Americans were making up an unusually large proportion of the mail ballots in Georgia," McDonald said.



#### POLITICS

Jimmy Carter Calls For Georgia Secretary Of State's Resignation In Personal Plea

As of Thursday, at least 20 states have already surpassed their vote totals for the entire early voting period in 2014, according to McDonald.

Billy Wimsatt is the executive director of Movement Voter Project, an organization that allows donors to support local groups focused on increasing voting among young people and in communities of color year-round.

Groups that know their communities intimately can make a big difference in motivating people who usually don't vote to get to the polls, according to Wimsatt.



"They just need to hear from someone they trust or someone locally who's going to help them close the deal," Wimsatt said.

The project has provided more than \$10 million to more than 300 groups in 40 states ahead of the midterms this year.

As the election nears, Wimsatt said the project is focused on filling budget gaps for these local groups during this critical period: paying for more canvassers and vans to transport people and other things needed during the final push to get out the vote.

"You can scale that up really fast ... \$10,000 could pay for 50 additional people getting out the vote in a community," he said.

Voter turnout usually drops off in non-presidential election years, and that drop off is even more steep among minorities and young voters.



#### POLITICS

Another 'Civil War?' Pessimism About Political Violence Deepens In A Divided Nation

But this year, activists argue that President Trump's polarizing policies and rhetoric are energizing people who might not normally vote.

"There really is a different sense of urgency and a different sense of what's at stake," said Adrienne Shropshire, executive director of BlackPAC, which works to mobilize African-American voters. "People understand the country to be in crisis right now. And their response is to say I'm going to participate."

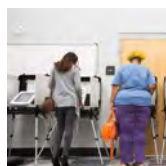


Democratic Georgia gubernatorial candidate Stacey Abrams and Grammy-winning artist Common lead voters during a "Souls to the Polls" march in downtown Atlanta on Oc. 28. The march went from Underground Atlanta to the Fulton County Government Center polling station open for early voting.

Jessica McGowan/Getty Images

BlackPAC is spending about \$8 million in 10 states on radio and mail ads. Its affiliated social welfare organization, Black Progressive Action Coalition (BPAC), is spending an additional \$6 million on a nonpartisan field program, with at least 1,500 canvassers.

The push to improve turnout comes as concerns about voter suppression are rampant in states like Georgia, where tens of thousands of voters have been purged from voter rolls and voting rights lawsuits have been filed.



#### ELECTIONS

Republican Voter Suppression Efforts Are Targeting Minorities, Journalist Says

Shropshire says reports of voter suppression are making some people more determined to vote.

"People are angry at the thought that in 2018 there are forces that are still trying to disenfranchise black communities," she said. "The challenge is that people need information ... about what to do if they are somehow being blocked from voting."



#### POLITICS

Voter Turnout Could Hit 50-Year Record For Midterm Elections

Ultimately, the final verdict on turnout will be rendered on Election Day. But, McDonald said the high levels of early voting, when taken together with other information gleaned from special elections and polling, seem to point to an increase in voting overall.

"All the information that's available to us points to an exceptionally high turnout midterm election, at least in modern history," he said.

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## 2020 Election: Secure Your Vote

# Why Is Voting By Mail (Suddenly) Controversial? Here's What You Need To Know

June 4, 2020 · 5:00 AM ET



MILES PARKS



An election worker sorts vote-by-mail ballots for Washington state's presidential primary on March 10 in Renton, a suburb of Seattle.

Jason Redmond/AFP via Getty Images

Casting a ballot by mail isn't a new way to vote, but it is getting fresh attention as the coronavirus pandemic upends daily life.

The voting method is quickly becoming the norm and quickly becoming politically charged as some Republicans — specifically President Trump — fight against the mail-

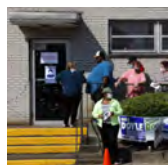
voting expansion happening nationwide.

Here are answers to key questions about mail ballots and the controversy around them.

- What is mail voting?
- Which states are offering mail voting?
- What do Americans think?
- What is the argument against it?
- What are the facts on fraud?
- Is nationwide mail voting possible?

## What is mail voting?

The phrases "mail voting" and "voting by mail" encompass a wide range of policies, all meant to offer more flexibility to voters who either want or need to cast a ballot in a location other than a polling place.



2020 ELECTION: SECURE YOUR VOTE

Primary Election Snafus Show Challenges For November Vote

The practice dates back to the Civil War, according to the Massachusetts Institute of Technology's Election Data Lab, when soldiers were given the opportunity to vote from the battlefield. States began expanding absentee voting laws in the late 1800s to accommodate voters who were away from home or sick on Election Day.

Currently, all states allow at least a portion of their voting population to vote by mail.

Some states allow all registered voters to receive a mail ballot (also known as an absentee ballot), and some states require an excuse or reason. Policies vary widely state by state as well as on what is required to have a mail ballot counted; some states



## How many states are offering access to mail voting during the pandemic?

Almost all of them. Forty-six states now offer access to some form of mail voting to all voters, according to a recent report from the nonprofit Open Source Election Technology Institute.

Overall, that expansion has been bipartisan; 24 of the states have Democratic governors, and 22 have Republican governors.

But the limited pushback to the mail-voting expansion has come almost exclusively from Republicans.



### THE CORONAVIRUS CRISIS

States Expand Internet Voting Experiments Amid Pandemic, Raising Security Fears



### 2020 ELECTION: SECURE YOUR VOTE

Feds Warn States That Online Voting Experiments Are 'High-Risk'

All four states that have not expanded mail-voting access are led by Republican governors, according to the Open Source Election Technology Institute report.

Texas, for instance, is one of the four states that hasn't expanded access to mail ballots in response to the pandemic, and Republicans there are engaged in high-profile court battles to keep it that way.

Texas Attorney General Ken Paxton has said in statements that "fear of contracting COVID-19 does not amount to a sickness or physical condition as required by state law." He also said that his office would prosecute people for voter fraud if they use a mail-in ballot in a matter he said is improper.



only require a voter's signature, whereas others require witness signatures or the notarization of a ballot return envelope.

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Most other state-level Republicans have embraced mail-voting expansions however, including in a number of states such as Georgia and Iowa, which mailed all registered voters absentee ballot request forms ahead of their June primaries.

Overall, experts estimate as many as 70% of all ballots cast in November's general election could be cast by mail.

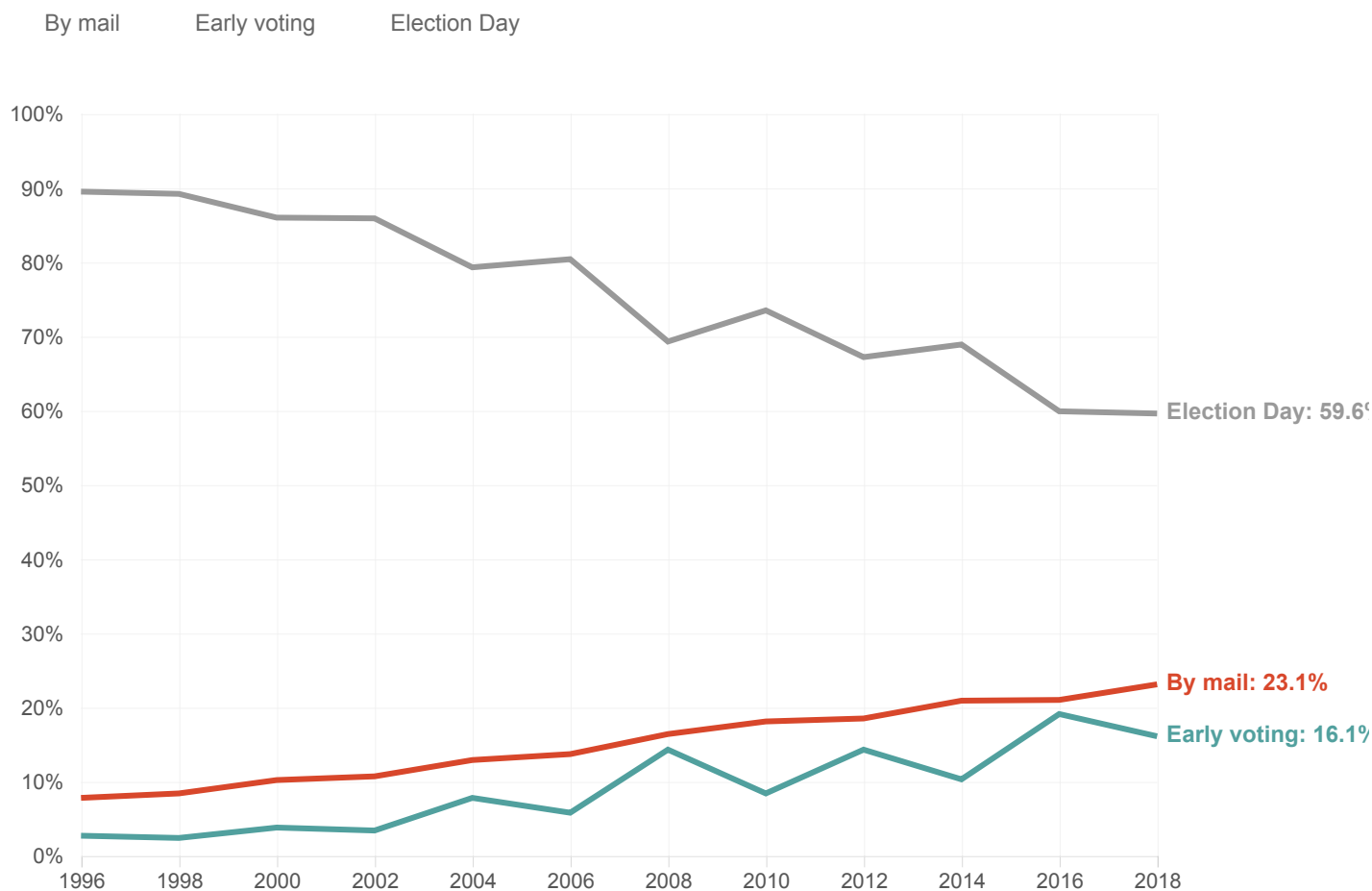
### **How do Americans feel about mail voting?**

Overall, even before the pandemic sent election officials scrambling to make sure people could vote safely, mail voting has been on the rise in the United States.

About a quarter of all voters voted by mail in the 2018 midterms, more than double the rate of mail voting from 20 years ago. Much of that increase comes from the handful of states transitioning to all-mail elections in recent years.

## Nearly 1 In 4 Votes Was Cast By Mail In 2018

Although early voting tends to see a jump during presidential election years, voting by mail has seen a steady increase as a share of all voting in general elections since 1996.



Source: U.S. Census Bureau

Credit: Thomas Wilburn/NPR

Nationwide, the attitude toward mail ballots is also decisively positive. A recent Pew Research Center poll found that more than 70% of Americans think any voter who wants to vote by mail should be able to do so.

That includes 49% of Republicans. GOP support jumps to almost 70% in states where a sizable amount of the population already votes by mail. This seems to indicate that as voters become familiar with how mail voting works, they become more likely to support it.

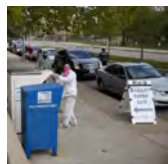
The opposition to mail voting is anchored by Republicans in states that don't offer wide access to mail voting already.

## What have President Trump and Republicans in Congress said about mail voting?

The president has made it clear that despite voting by mail himself multiple times, he does not support wide expansion of the practice.

He has tweeted a number of false claims about what states are doing, including saying it was illegal for the secretary of state of Michigan to mail all registered voters in that state ballot request forms, and misrepresenting California's decision to mail all registered voters ballots.

Notably, Twitter decided to weigh in by adding a "fact check" label to his tweet about California's decision.



### 2020 ELECTION: SECURE YOUR VOTE

'It's Partly On Me': GOP Official Says Fraud Warnings Hamper Vote-By-Mail Push

Trump says voters should be required to have a reason for voting absentee, otherwise the election process will become "substantially fraudulent." He and his staff point to a number of isolated incidents of fraud but have never provided the data needed to prove the point. Election experts say the claim is false.

Trump has also indicated he thinks expanding mail balloting would be bad politically for the Republican Party, although research disputes this notion as well. A recent study from Stanford University found no partisan effect of implementing universal mail voting.

Many Republicans in Congress, meanwhile, are focused on how mail ballots are returned. They don't want people to be able to return ballots for others.

Generally, Democrats see the practice as helpful for vulnerable populations; one person turning in all the ballots for a nursing home or housing complex for instance. But what Democrats call "community ballot collection," Republicans deride as "ballot

harvesting," and say it opens up those same vulnerable populations to manipulation and vote coercion.



#### THE CORONAVIRUS CRISIS

Need A Witness For Your Mail-In Ballot? New Pandemic Lawsuits Challenge Old Rules

"These harvesters picking up ballots don't have to show an ID, they don't have to be a citizen, and they don't have to be eligible to vote," U.S. Rep. Rodney Davis, R-Ill., ranking member of the Committee on House Administration, wrote in a recent op-ed. "You expect Americans to believe that having someone who can't vote picking up ballots won't invite fraud in our elections?"

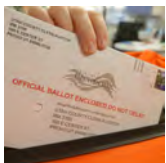
Democrats, however, are suing to allow to allow third-party collection in a number of states, including battlegrounds such as Pennsylvania and North Carolina.

### **What does the data say about fraud when it comes to mail ballots?**

While election experts say fraud in mail balloting is slightly more common than in in-person voting, it's still such a minuscule amount it's not statistically meaningful.

Amber McReynolds, a former Colorado election official and now the CEO of the National Vote at Home Institute, and Charles Stewart, director of the MIT Election Data and Science Lab, recently put the numbers in context in an op-ed in The Hill titled "Let's put the vote-by-mail 'fraud' myth to rest."

Over the past 20 years, they write, more than 250 million ballots have been cast by mail nationwide, while there have been just 143 criminal convictions for election fraud related to mail ballots. That averages out to about one case per state every six or seven years, or a fraud rate of 0.00006%.



#### POLITICS

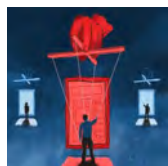
Voting By Mail Is On The Rise, But Could Alleged N.C. Election Fraud Change That?

"Expanding voting by mail will be a challenge in most states in 2020," they write. "But we reiterate: There is no evidence that mail-balloting results in rampant voter fraud, nor that election officials lack the knowledge about how to protect against abuses."

There's also no evidence of the sort of mail-voting interference that U.S. Attorney General William Barr mentioned in a recent New York Times Magazine interview.

Barr alluded to foreign countries being able to "easily make counterfeit ballots, put names on them, send them in," although election officials and experts immediately debunked that assertion.

Jennifer Morrell, an elections consultant and former local elections official in Utah and Colorado, told NPR that for such a plot to work just for a single ballot, an adversary would need to mimic everything perfectly from the ballot's size, style and even paper weight to the envelope it's mailed in — all of which often changes every election cycle and which is different from county to county.



#### THE CORONAVIRUS CRISIS

Social Media Usage Is At An All-Time High. That Could Mean A Nightmare For Democracy

"Ballots are built unique for each election. Each jurisdiction will normally have dozens to hundreds of unique ballot styles. Proofs for each ballot style are reviewed and tested to ensure the ballot scanners will read those ballots and only those ballots," Morrell said. "Even ballots created on that system from a previous election cannot be read."

In all, Morrell listed dozens of unique aspects that the adversary would have to copy perfectly in addition to lining it up with an actual voter in a registration system and faking a signature that aligns with the signature on file for the voter.

"You would need to replicate all of these elements exactly and do it for the 10,000-plus jurisdictions, and hundreds of thousands of unique ballot styles within the U.S.," she said.

Or as Colorado elections director Judd Choate put it to The Washington Post: "It's preposterous to the point of humor."

## Is it feasible for the entire country to vote by mail in November?

This idea is popular with some Democrats in Congress, including Sens. Ron Wyden and Amy Klobuchar, who introduced the Natural Disaster and Emergency Ballot Act earlier this year. The bill would drastically expand mail-voting access to all U.S. voters and reimburse local election officials for the multibillion-dollar cost of providing that access.

But it's unlikely to pass as Republicans in Congress are resistant to any measures that regulate elections from the federal level; they insist that states and localities should govern their own democratic processes.



### ELECTIONS

Ballot Printers Increase Capacity To Prepare For Mail Voting Surge

Election experts are also skeptical that states, especially ones used to only mailing and receiving a small number of mail ballots, could effectively scale up their operations in time for November. Such changes usually take states years, if not decades.

The private companies tasked with printing the ballots could also be overwhelmed at the rapid increase in demand.

"Decision-making needs to be right now," said Kevin Runbeck, CEO of Runbeck Election Services, one of the nation's largest ballot printing companies, at a recent U.S. Election Assistance Commission hearing. "We cannot gear up, we cannot build equipment fast enough if you wait until July to place your orders."

mail voting



# Exhibit I

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REPORT

# Dirty Tricks: Eight Falsehoods that Could Undermine the 2020 Election



Doug Chayka

**TRUTH MATTERS:** Fake election crises can undercut trust in the vote, inflame partisan tensions, and destabilize our democracy.



Max Feldman

PUBLISHED: May 14, 2020

The 2020 election will be hard-fought and divisive. The Covid-19 pandemic has already caused major disruptions to our elections system, and the risk that other real crises — natural disaster, machine breakdown, foreign interference — will further disrupt the election is significant. But there is also a significant risk that political actors will manufacture crises to undermine election results they don't like. These fake crises can undercut trust in the accuracy of election outcomes, inflame partisan tensions, and destabilize our democracy.

Here are eight lies, misconceptions, and false arguments that we think voters will have to contend with in 2020:

## 1. “Voter Fraud” Is Rampant

**The Claim:** There is widespread voting by ineligible individuals.

**The Truth:** This type of fraud is extremely rare.

Based on a meticulous review of elections that had been investigated for voter fraud, the Brennan Center **found** miniscule incident rates of ineligible individuals fraudulently casting ballots at the polls – no more than 0.0025 percent. Numerous reports have **confirmed** our finding that voter fraud is exceedingly rare. Research shows that voter fraud is similarly rare with **mail ballots**.

An exhaustive review by Professor Justin Levitt of Loyola Law School **found** just 31 credible instances of impersonation fraud from 2000 to 2014, out of more than 1 billion ballots cast.

Overhyped allegations of voter fraud are regularly made, but follow-up investigation almost always reveals that these claims were based on fundamental errors. For example, in 2017, Kris Kobach – the vice chair of President Trump’s voter fraud commission – **claimed** that thousands of out-of-state voters had cast a ballot illegally in New Hampshire in the 2016 election, swinging that state’s Senate election. Kobach’s claim was based largely on a misunderstanding of New Hampshire law and was quickly **debunked**.

In 2018, Florida Gov. Rick Scott claimed that there was “**rampant fraud**” in his U.S. Senate race, but that claim was rejected by **law enforcement officials** and **election monitors** from his own administration. This pattern has **repeated** itself again and again.

These results are not for lack of looking for voter fraud. In 2002, then Attorney General John Ashcroft **created** the Voting Access and Integrity Initiative, which aggressively investigated voter fraud allegations as one of the top priorities of the Justice Department.

After five years, however, the U.S. Department of Justice found little evidence of fraud. In 2007, the **New York Times** reported that only about 120 people were charged and 86 were convicted of election-related crimes, despite hundreds of millions of votes being cast, during the period under investigation.

While fraud *by* voters almost never occurs, fraud *against* voters does occur, albeit rarely. This type of fraud is committed by bigger players, with bigger weapons than an improperly filled ballot. Think Putin’s hackers or election workers stuffing ballot boxes. Importantly, the policies needed to address this kind of fraud are dramatically different than the policies proposed to address the specter of voter impersonation fraud.

**The Consequences:** More restrictive voting laws and lower levels of trust in elections.

Voter fraud claims have had a deeply deleterious effect on the last decade of American elections. They have been used to justify **restrictive** state voting practices — like **strict voter identification** laws and overly aggressive purges of the voter rolls — that disenfranchise legitimate voters, often in a discriminatory manner.

More broadly, they undermine trust in the integrity of our elections process.

## 2. Noncitizens Are Voting in Droves

**The Claim:** Millions of noncitizens are voting and tipping election outcomes.

**The Truth:** Noncitizen voting is exceedingly rare.

Following President Trump's allegations of widespread noncitizen voting in the 2016 election, the Brennan Center researched the incidence of noncitizen voting in 42 election jurisdictions with large noncitizen populations. We **found** only about 30 incidents of suspected non-citizen voting referred for further investigation or prosecution out of 23.5 million votes tabulated in those jurisdictions. Put another way, suspected noncitizen votes accounted for 0.0001 percent of the 2016 votes in the jurisdictions we surveyed.

More recently, Texas Secretary of State David Whitley **announced** that tens of thousands of noncitizens were on the state's voter rolls and had cast a ballot. This claim was **debunked** within days — the secretary's list **failed to account** for the fact that a large number of people become naturalized citizens and then lawfully register to vote. A federal court **intervened** to stop voter purges premised on this discredited claim. And Secretary Whitley ultimately **resigned**.

These results make sense. A single vote rarely swings an election, but the punishment for noncitizen voting is severe — including imprisonment, \$10,000 in fines, and deportation.

**The Consequences:** More restrictive voting laws and lower levels of trust in elections.

Claims of noncitizen voting have been used to justify **restrictive** voting practices that make it difficult for legitimate voters to participate, including **documentary proof of citizenship** laws, voter ID laws, and large-scale **voter purges**. These practices **disenfranchise** many eligible voters, typically in a **discriminatory** fashion, with little to no benefit.

These claims also undermine trust in the integrity of our elections process, and they are particularly inflammatory because of their intersection with race and immigration.

## 3. The Machines Malfunctioned — They Were Clearly Rigged

**The Claim:** "Vote flipping" by voting machines — and other malfunctions, such as machines failing to start, crashing, or freezing — are clear indications that hackers have penetrated machines or that partisans have rigged the election in favor of their preferred candidate.

**The Truth:** Malfunctions may be the result of **wear and tear** rather than hacking or manipulation. For example, vote flipping can be caused by the glue between the touch screen and the machine **wearing down**.

The Brennan Center has **sounded** the **alarm** about aging voting machines for years. In 2018, jurisdictions in **41 states** used voting systems that were at least a decade old.

Since then, at least nine states have upgraded their voting systems to eliminate old machines. Importantly, we project that no **battleground states** will use paperless Direct-Recording Electronic (DRE) voting machines in 2020 — the type of machine most susceptible to hacking and to vote flipping.

**The Consequences:** Inaccurate claims of hacking or vote-rigging could lead to extreme partisan conflict over election results in 2020.

Given **interference** in the 2016 election and our subsequent political history, allegations of foreign hacking of voting machines will be highly inflammatory and divisive, as will allegations of vote-rigging.

Credible allegations of hacking must be investigated, hacking must be exposed, and any interference must be remediated.

## 4. Something's Fishy — the Results Are Taking Too Long

**The Claim:** A failure to announce results on election night is an indication of malfeasance in the election process.

**The Truth:** In a close election, getting the right result can take time.

The modern media environment has engendered an unreasonable expectation that election results will be delivered, definitively, on election night.

Especially in close elections, that expectation cannot always responsibly be met, because election officials generally **cannot complete** the canvass of all absentee and provisional ballots until after Election Day.

Furthermore, election scholars Ned Foley and Charles Stewart have identified a “**blue shift**” in ballots counted after Election Day. These “overtime” ballots break disproportionately for Democratic candidates because Democrats are more likely than Republicans to cast provisional ballots.

Sometimes, close elections or postelection audits can trigger a recanvass of vote totals or broader recounts, which take additional time.

**The Consequences:** Rushing out election results can lead to inaccurate election night calls of outcomes, resulting in increased partisan conflict over election outcomes and decreased trust in democratic processes.

On election night in 2000, major news organizations called Florida for Al Gore, retracted that call, then called the state for George W. Bush, and subsequently retracted that call. The election was not definitively resolved until 36 days later. A **postmortem** commissioned by CNN flatly stated: "Those calls and their retractions constituted a news disaster that damaged democracy and journalism."

More recently, the Iowa Democratic Party set the expectation that the initial results of the Democratic Caucus would be released at **8:30 p.m. on election night**. Due to a cascading series of **technological and planning blunders**, the party was unable to meet that deadline. The mismatch between expectations and the actual timeline for producing results gave an opening to social media **conspiracy-mongers**, who sought to undermine trust in the ultimate outcome.

In addition, at times, there are errors in the unofficial election night results, which then need to be corrected. For example, following Election Day 2004, Broward County election officials double-checked their results and found that tens of thousands of votes on certain state amendments **had not been counted** as a result of a software glitch. The software used to count absentee ballots started counting backward after it logged 32,000 votes in a race.

## 5. That's Not What the Election Night Predictions Said

**The Claim:** Election outcomes that differ from election night projections are suspect.

**The Truth:** Ballots continue to be counted after election night and, in a close election, those ballots can change the outcome.

In 2020, we will likely see a surge in the use of mail-in and provisional ballots. Covid-19 may dramatically shift voters toward mail balloting. Furthermore, we have seen a fairly steady **climb** in the use of mail-in ballots over the past quarter-century, and states have continued to expand the use of **all-mail elections** and **by-mail absentee voting** in recent years.

In addition, high turnout, a recent escalation in **voter purges**, and heightened risk of **foreign interference** may all contribute to increased use of **provisional ballots**, which are a fail-safe option for voters who cannot confirm their eligibility at the polls for any number of **reasons**.

These are positive, voter-friendly balloting options, but they can take longer to canvass than regular ballots cast in person on Election Day. For example, a **number of states** accept mail ballots that arrive after Election Day or offer voters an opportunity to fix purported signature discrepancies on their absentee ballot. (Additional states may do so in response to Covid-19.) Similarly, it takes **time** for election officials to evaluate the validity of provisional ballots.

**The Consequences:** Increased partisan conflict over election outcomes and decreased trust in election outcomes.

During a recount in Florida's 2018 Senate race, the eventual winner, Rick Scott, repeatedly **claimed** without evidence that his opponent was trying to steal the election through fraud. These claims were amplified by partisans, including **President Trump**. As a result, state law enforcement officials were forced to **weigh in** to dispute claims of criminal activity.

## 6. Recounts, Audits, and Election Contests Are Ways to Steal an Election

**The Claim:** Recounts, audits, and election contests are illegitimate attempts to undo a valid election result.

**The Truth:** Recounts, audits, and election contests are all normal parts of the elections process that help to ensure that every valid ballot is counted accurately.

A recount is exactly what it sounds like — a process to count the ballots cast in a close election again. Twenty states mandate automatic recounts if a small number of votes separate the top candidates in the election, and 43 permit individuals to petition for a recount, according to the **National Conference of State Legislatures**.

Audits are a process to verify the accuracy of vote totals, by comparing paper records of votes to electronic vote tallies. Twenty-four states voter verifiable paper records for all votes cast as well as **post-election audits** of paper records before certifying election results. Particularly given the election security challenges that have arisen in recent years, audits are a crucial component of responsible election administration.

**Election contests** are challenges to election results. The bases for these challenges, and the people permitted to bring them, vary from state to state and from office to office.

Because each of these processes can result in a different election outcome than the one projected on election night, the election night winner has a strong incentive to seek to undermine their legitimacy or to halt them altogether. These incentives will be especially strong in 2020, given the stakes of the election.

**The Consequences:** Increased partisan conflict over and decreased trust in election outcomes.

In 2000, for example, GOP-organized protesters **stormed** the Stephen P. Clark Government Center in downtown Miami and succeeded in shutting down the recount of Miami-Dade County's presidential ballots. The so-called "**Brooks Brothers riot**" produced a partisan benefit for one side in the election. But it contributed to the "**voting wars**" that have made voting rules a site of significant partisan conflict since 2000.

## 7. People Can't Help People Vote



**The Claim:** Groups that help many voters cast their absentee ballots are engaged in illegal “ballot harvesting,” and laws that allow such assistance enable election fraud.

**The Truth:** Partisans use the pejorative “ballot harvesting” to criticize two very different sets of practices: (a) illegal and illegitimate absentee ballot tampering and (b) legal and legitimate assistance to voters casting their absentee ballots. Voter assistance is *not* evidence of fraud.

Ballot tampering is illegal everywhere. That includes practices like stealing ballots from mailboxes, filling out other people’s ballots without their consent and direction, and changing or throwing out other people’s ballots.

Most states allow certain individuals — especially family members, health-care providers, and legal guardians — to assist voters by collecting and submitting their absentee ballots. Many states allow a broader array of individuals to provide ballot assistance. Where allowed, ballot collection is *not* indicative of any malfeasance or fraud.

The biggest ballot tampering scandal in recent memory was in connection with the 2018 congressional election in North Carolina’s 9th congressional district. There, a GOP political operative ran an operation that collected absentee ballots from voters and **tampered with** those ballots. This led to the North Carolina Board of Elections **ordering** a new congressional election in the district. Ballot collection is **illegal** in North Carolina. Indeed, ballot tampering scandals are not more common in states that allow ballot collection.

Some partisans have tried to **leverage** the North Carolina election fraud into an indictment of absentee ballot assistance laws by suggesting that ballot assistance practices are all forms of illegitimate ballot harvesting. In particular, they incorrectly **claim** that the “ballot harvesting” that is illegal in North Carolina is actually legal in California because of a 2016 **ballot collection law** that permits people other than family members to collect voters’ absentee ballots.

This is false. Ballot assistance may be legal in California, but ballot tampering is illegal there — as it is everywhere in the country.

**The Truth, Moreover:** Absentee ballot assistance laws can be critical lifelines for voters.

Twenty-seven states have absentee ballot assistance laws that permit voters to designate someone other than a family member to return their absentee ballot, according to the **National Conference of State Legislatures**.

Some voters need this assistance in order to cast a ballot. For example, the **Native American Rights Fund** has said, “Native voters, especially tribal elders, often lack reliable transportation and reside in geographically remote areas in which they rely upon friends and neighbors to pick up and return their mail.” As a result, barring third-party assistance with absentee voting “would effectively disenfranchise tens of thousands of Native voters.”

**The Consequences:** Lower levels of trust in elections and more restrictive voting laws.

Like other claims of widespread fraud, attacks on “ballot harvesting” undermine trust in the integrity of the elections process.

In addition, **Arizona** and **Montana** have enacted laws to sharply restrict third-party assistance to absentee voters in recent years. In January 2020, the 9th U.S. Circuit Court of Appeals **struck down** Arizona's restriction, holding that it had a discriminatory effect on American Indian, Hispanic, and African American voters in violation of the Voting Rights Act and that it was passed for a discriminatory purpose, in violation of the Fifteenth Amendment. (This decision has been stayed pending Supreme Court review.)

According to the to the court, minority voters were more likely than other voters to rely on assistance casting their absentee ballots, for a variety of reasons including issues with transportation and mail service.

## 8. We Need More Aggressive Purges to Clear Out All the Ineligible Voters

**The Claim:** Aggressive voter purges are needed because voter rolls are infected with large numbers of ineligible voters.

**The Truth:** Claims that voter rolls are “dirty” are overblown.

Many of the **claims** that jurisdictions have more voters on the rolls than eligible people in the jurisdiction appear to be **based on** a rudimentary comparison between U.S. Census population data, which is not designed to estimate the eligible voting age population, and county election statistics, which are measured at “book closing” — the period immediately before an election, when registration rates are at their high-water mark. Federal courts have **rejected** this approach, and many of the targeted jurisdictions have **rebutted these claims**.

Furthermore, some of these claims have **included** “inactive” voters — those who have been flagged for potential removal from the rolls — in the count of registered voters. Federal law, sensibly, requires jurisdictions to keep these voters on the rolls for two election cycles before purging them. This is a feature, not a bug: it helps to ensure that flagged voters have actually changed addresses or otherwise become ineligible.

**The Truth, Moreover:** Claims of rampant inaccuracies in the voter rolls are part of a sustained pressure campaign to push election officials to purge their rolls more aggressively. But aggressive purges can result in eligible voters being improperly kicked off the rolls.

For example, officials and activists have pushed the use of interstate data-matching systems, including one system administered by the Kansas secretary of state, to identify voters registered in more than one state. But the Kansas system has proven **deeply flawed**, in part because it matches voters using only their first name, last name, and date of birth, which is likely to produce false positives in groups as large as statewide or multistate registration lists. (In December 2019, Kansas **suspended** the system, as part of a court settlement.)

There has also been an uptick in state efforts to **purge** noncitizens, but the data states are using as the basis for these purges has not been consistently reliable. Texas's disastrous 2019 noncitizen **purge attempt** illustrates the point.

**The Consequences: Purge numbers are growing.**

10

The Brennan Center has documented a **dramatic surge** in purge rates since the Supreme Court **gutted** the Voting Rights Act (VRA) in 2013.

Counties that were previously covered by Section 5 of the VRA — that is, counties in states with a history of voting discrimination — have purged people from the rolls at much **higher rates** than other counties have. The median purge rate between 2016 and 2018 in jurisdictions previously covered by Section 5 was 40 percent higher than the purge rate in jurisdictions that were not covered.

**The Consequences, Moreover: Improper purges can disenfranchise eligible voters, cause undue delays at the polls, and heighten distrust in our election systems.**

In 2016, the New York City Board of Elections **purged** hundreds of thousands of voters with little notice to voters or the public. On Election Day, thousands of voters showed up at the polls only to find that their registrations had been deleted.

In 2019, the Texas secretary of state announced that there were 95,000 noncitizens on the state's voter rolls, including 58,000 who had voted illegally. This claim, which was based on state driver's license data, was **false**. A federal court **halted** purges based on the faulty information and the secretary of state eventually **resigned** over the debacle, but not before President Trump **amplified** the initial false claim, sowing distrust in the elections process.

As noted above, claims that several Iowa counties had more voters on their rolls than eligible voters in the county also **appeared** ahead of the Democratic Caucus in January 2020. These claims were quickly **debunked**, but the confusion around the caucus vote counting gave them new life and gave partisans new opportunities to question the integrity of the election.