

Testimony of Thomas J. Fitton before the Maryland General Assembly

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Thomas J. Fitton
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Good Morning Chairman and Members of General Assembly,

My name is Tom Fitton. I am President of Judicial Watch, Inc, a Washington DC-based public interest nonprofit dedicated to promoting transparency and restoring trust and accountability in government, politics, and the law. Since 1994, Judicial Watch has become the largest, most successful Freedom of Information Act (FOIA) litigator, exposing corruption in the federal government through FOIA. Consistent with our primary mission, we also have been involved for almost a decade in ensuring the honesty and integrity of our electoral processes. Judicial Watch is now the nation’s premier enforcer, public or private, of the election integrity provisions of the National Voter Registration Act of 1993 (NVRA).

For years, Americans have been losing faith in the integrity of our electoral system. Many polls have been taken on this subject and they reach the same conclusion. The Gallup organization conducts a particularly interesting poll, which compares American attitudes with those of other countries. The poll simply asks respondents if they “have confidence” in the “honesty of elections.” Last year, only 40% of Americans answered yes, while an astonishing 59% said no.¹ According to Gallup, the United States has “one of the worst ratings across the world’s wealthiest democracies,” with only Chile and Mexico reporting statistically lower ratings.² This phenomenon long predates the COVID-19 pandemic. Gallup reports that “[m]ajorities of Americans have consistently lacked confidence in the honesty of elections every year since 2012.”³

Among the explanations for this loss of faith, we must include the public’s impatience with the politicization of electoral procedure, and, in particular, with dubious objections to what are widely perceived to be commonsense election integrity measures. The most obvious example to date concerns the heated, partisan fight against voter ID laws. A Pew Research Center study after the 2018 elections found strong, bipartisan support for voter ID, which was favored overall by 76% of those polled and even by a considerable majority of those identifying as Democrats (63%).⁴ This support is understandable in a society where one must produce identification for so many different reasons, from getting on a plane to buying prescription drugs to working out in a gym.

¹ R.J. Reinhart, *Faith in Elections in Relatively Short Supply in U.S.*, Feb. 13, 2020, available at <https://news.gallup.com/poll/285608/faith-elections-relatively-short-supply.aspx>.

² *Id.*

³ *Id.*

⁴ Kristen Bialik, *How Americans view some of the voting policies approved at the ballot box*, PEW RESEARCH CENTER, Nov. 15, 2018, available at <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.

That voter ID laws are so often opposed, and with significant success, by political operators is a sad sign of our times. As the Supreme Court has noted, regardless of the prevalence of fraud, states have an obvious, legitimate “interest in counting only the votes of eligible voters” and in “carefully identifying all voters participating in the election process.”⁵ This interest is justified by the nature of voter fraud, which is hard to detect or punish after the fact.

I could easily multiply examples of commonsense election integrity laws that partisans have made the subject of unnecessary and manufactured opposition. By far the silliest example I have found was a 2017 Virginia state bill that would have required electronic pollbooks to contain the photograph taken by the Department of Motor Vehicles for each registered voter who has a driver’s license.⁶ Note that the actual photograph of a voter taken by the DMV cannot possibly discriminate against that voter. Yet Governor McAuliffe vetoed that bill.

My point here is that the American people see what they conclude are disingenuous fights over electoral procedures and lose faith in the honesty of our elections. With this background in mind, I turn to the measures proposed in regard to absentee ballots.

In 2005, the bipartisan Carter-Baker Commission noted the particular risks associated with absentee (mail-in) ballots:

Absentee ballots remain the largest source of potential voter fraud....Absentee balloting is vulnerable to abuse in several ways: Blank ballots mailed to the wrong address or to large residential buildings might get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation. Vote buying schemes are far more difficult to detect when citizens vote by mail.⁷

While I share all of these concerns, I would like to focus on the problem of ballots mailed to the wrong address. Voter registration lists throughout the country are routinely out of date, containing registrations for voters who no longer live at the stated address, who have died, or who are ineligible under the law for some other reason. This has been a problem for years. A Pew Research Center report issued during the Obama years noted that “[a]pproximately 2.75 million people have active registrations in more than one state,” that “24 million — one of every eight — active voter registrations in the United States are no longer valid or are significantly inaccurate,” and that “[m]ore than 1.8 million deceased individuals are listed as active voters.”⁸ We know about this problem at Judicial Watch because of our work in enforcing the NVRA. Data states provided to the Election Assistance Commission in 2019 showed hundreds of U.S. counties with voter lists containing more registered voters than there were citizens over the age of 18—meaning

⁵ *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008).

⁶ S. 1253 (2017).

⁷ REPT. OF COMM'N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS at 46 (2005).

⁸ *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade*, PEW RESEARCH CENTER ON THE STATES, Feb. 14, 2012, at 1.

a registration rate of more than 100%. Considering just the part of counties' voter rolls in excess of 100% shows that there are 2.5 million "extra" registrants on our nations' voter rolls.

Maryland is no exception. In Judicial Watch's latest study in October 2020, it found Anne Arundel, Calvert, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, Queen Anne's, Talbot, and Worcester counties all have total voter registrations exceeding eligible citizen voting population as calculated by the annual U.S. Census Bureau's American Community Survey. And Maryland was one of eight states whose total voting population exceeded its voting-age citizenry statewide. Judicial Watch only recently obtained the voter registration list in Montgomery County, Maryland last year after a federal judge ordered its release, holding that state law restrictions limiting registration lists to Maryland registered voters was preempted by the NVRA.

In Judicial Watch's research, counties throughout the country have high numbers of "inactive" registrations that have not yet been cancelled. A registration becomes inactive when a registrant is sent, and fails to respond to, an address confirmation notice. If that registrant does not vote or otherwise contact election officials for the next two general federal elections (from two to four years), that registration is cancelled pursuant to the NVRA.⁹ During that statutory waiting period the voter is called inactive.

It is crucial to note that an inactive registration can still be voted on election day.¹⁰ This does not even require the voter to use a provisional ballot. The voter need only affirm his or her address, and in many states this can be done orally. To be clear, the poll worker asks a voter if he or she lives at the listed address, and the voter says "yes." At that point, the voter can vote.

Now consider our experience in Los Angeles County, which we sued for noncompliance with the NVRA in 2017. We learned that the State of California had not been removing inactive registrations for *20 years*, pursuant to a misguided accommodation reached with Janet Renos' Justice Department. As a result, Los Angeles County by 2018 had about 1,565,000 inactive registrations—almost one fourth of all the registrations in the County. State differently, the County of Los Angeles alone had more *inactive* voter registrations than the State of Hawaii has people of every age. And this is not just Judicial Watch's calculation. These inactive registrations were tallied by Los Angeles County, and were openly admitted in the agreement it signed settling the lawsuit.¹¹ Some had been inactive for almost twenty years. Most had moved long ago. Tens of thousands of these inactive registrants had died.

Many other counties have lists containing old, inactive registrations. Our 2018 consent decree with the Commonwealth of Kentucky addressed the hundreds of thousands of outdated registrations in that State.¹² A few months ago, Allegheny County, Pennsylvania admitted that it

⁹ 52 U.S.C. § 20507(d)(2).

¹⁰ 52 U.S.C. § 20507(e).

¹¹ Settlement Agreement, *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. Jan. 3, 2019) (ECF No. 96-1) at 6, ¶1.

¹² Consent Judgment, *Judicial Watch v. Grimes*, 3:17-cv-94 (E.D. Ky. Jul. 3, 2018) (ECF No. 39).

had nearly 70,000 inactive registrations that it had failed to remove for longer than the NVRA's statutory waiting period of two general federal elections. It only removed them after receiving a warning letter from Judicial Watch.¹³ North Carolina's own published shows it has nearly a million inactive registrants. Pennsylvania admits to about 800,000 inactive registrants. Judicial Watch recently commenced lawsuits against both of those states over their failures to clean their voter rolls. If mail-in ballots are sent to the addresses of such inactive voters, there is the danger that they will be improperly voted. Indeed, where states or counties are not cleaning their voter rolls, even their *active* registrations become outdated.

One of the main reasons the Carter-Baker Commission identified absentee ballot fraud as "the largest source of potential voter fraud" is simple: It poses fewer risks for a person filling out and mailing a fraudulent ballot. By contrast, a person attempting "impersonation" fraud at a polling site must at least appear to cast the vote and, in consequence, may be found out and detained. Even so, a number of recent stories attest to the practice of mail-in ballot fraud. A California man was charged for attempting to register 8,000 fictitious and deceased individuals to receive mail-in ballots in the lead up to the November 2020 election.¹⁴ A West Virginia postal worker was indicted for manipulating eight voters' absentee ballots for the same election.¹⁵ In 2019, an Oakland County clerk outside Detroit Michigan was charged with illegally altering 193 absentee ballots.¹⁶ A Minneapolis, Minnesota man was charged with helping 13 others falsify absentee ballots ahead of the 2018 election.¹⁷ In 2017, a Dallas County, Texas man was convicted after 700 mail-in ballots were witnessed and signed by a fictitious person.¹⁸ And recently in North

¹³ *Under Threat of Lawsuit, Allegheny Co. Purging 69,000 Inactive Voters From Rolls* (CBS PITTSBURGH, Jan. 14, 2020), available at <https://pittsburgh.cbslocal.com/2020/01/14/allegheny-county-board-of-elections-voter-rolls/>.

¹⁴ James Queally, *Hawthorne Men Accused in Voter Fraud Plot to Obtain 8,000 Mail Ballots for 'Nonexistent or Deceased' Persons*, *The Los Angeles Times*, Nov. 17, 2020, available at <https://www.latimes.com/california/story/2020-11-17/hawthorne-men-accused-in-voter-fraud-plot-to-attain-8-000-mail-ballots-for-nonexistent-or-deceased-persons>.

¹⁵ John Raby, *West Virginia Mail Carrier Charged With Altering Absentee Ballot Requests*, *TIME*, May 27, 2020, available at <https://time.com/5843088/west-virginia-mail-carrier-fraud-absentee-ballots/?linkId=89524172>.

¹⁶ Christine Ferretti, *Southfield city clerk charged with 6 felonies tied to November election*, *THE DETROIT NEWS*, SEP. 23, 2019, available at <https://www.detroitnews.com/story/news/local/oakland-county/2019/09/23/southfield-city-clerk-charged-six-felonies-november-2018-election/2416101001/>.

¹⁷ Paul Walsh, *Minneapolis man charged with helping 13 people cast fraudulent ballots in 2018*, *STAR TRIBUNE*, Nov. 5, 2019, available at <https://www.startribune.com/minneapolis-man-acted-as-helper-for-13-people-casting-fraudulent-ballots-charges-say/564507232/>.

¹⁸ Stephen Young, *Dallas Man Pleads Guilty in 2017 West Dallas Voter Fraud Investigation*, *DALLAS OBSERVER*, Jun. 21, 2018, available at <https://www.dallasobserver.com/news/dallas-man-gets-six-months-for-vote-fraud-10819409>.

Carolina's 9th Congressional District race, a scheme was run to steal 1,200 absentee ballots and fill them out, in a race that was decided by only 900 votes.¹⁹

The State of Maryland does not need to wait for such acts to occur in this state in order to take prophylactic measures to restore its citizens' faith in the integrity of the electoral process.

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¹⁹ David A. Graham, *North Carolina Had No Choice*, THE ATLANTIC, Feb. 22, 2019, available at <https://www.theatlantic.com/politics/archive/2019/02/north-carolina-9th-fraud-board-orders-new-election/583369/>.