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ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

May 27, 2020

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Marcia Fudge
Chairwoman
Subcommittee on Elections
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren and Chairwoman Fudge:

I write regarding the Subcommittee on Elections and its work for the remainder of the 116th Congress. I was disappointed to see that both of the Speaker's recent legislative proposals, in response to the coronavirus, included many federal mandates on how states should administer this year's elections. Both pieces of legislation were rushed through the House of Representatives in order to force states to overhaul their election administration procedures less than six months before a presidential election. These mandates, such as requiring states to implement early voting, voting by mail, and same-day registration, have taken other states years to successfully implement. This rushed process is nothing but a dangerous ploy to federalize elections under the guise of providing timely coronavirus relief to the American people. States are being told they must choose between accepting vote-by-mail as a federal mandate or risk the failure of their electoral system. I respectfully disagree with this false narrative.

At the start of this Congress I wrote to you on three areas I believe the Subcommittee should focus on. One of these areas was the practice of vote-by-mail, as election observers from the House of Representatives reported numerous irregularities in the 2018 mid-term elections. Unfortunately, my suggestion was ignored, and this lack of consideration foreshadowed the issues with vote-by-mail we now face as a nation. The Subcommittee has instead spent the previous 17 months focused on the Voting Rights Act, and while this topic is important, it is outside the jurisdiction of the Committee on House Administration and its Subcommittee. It is time for our Committee to focus on the issues within our jurisdiction.

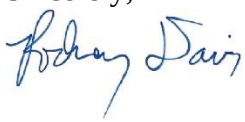
We owe it to the American people to carefully and thoughtfully examine the issue of vote-by-mail. This must be done before forcing voters to use a new, and at times, complicated method of voting. Vote-by-mail can add additional hurdles for voters, such as signature verification requirements that increase the likelihood that a vote will be rejected. Additionally, many states have simply ignored, or not had the resources to comply with, the National Voter Registration Act (NVRA) to maintain accurate voter registration lists upon which vote-by-mail

relies. Further, it remains unclear whether vote-by-mail on a large scale by November 2020 is even possible with the current level of paper production in the United States. These issues deserve to be addressed by the Subcommittee on Elections, especially given its efforts to examine voter discrimination.

One of the most pressing issues associated with vote-by-mail and absentee voting is ballot harvesting. Ballot harvesting, as the House majority continues to put forth, is a dangerous election process allowing any individual to collect any number of ballots for any reason, completely unchecked. Federal requirements to send all registered voters a live ballot in conjunction with legalized ballot harvesting would greatly diminish public confidence in our electoral process. Under such a system there is no guarantee there is a voter on the other end of each ballot and not a "ballot broker" looking to take advantage of the failure of many states to maintain proper voter registration lists. These and other election administration issues associated with the coronavirus deserve their day before the Subcommittee on Elections before we should even begin to consider federal intervention of this size and scale. For a detailed look at how ballot harvesting is currently being weaponized politically, I have enclosed my recent report on ballot harvesting in California.

I hope we can work together to ensure that the House does not continue to legislate a federalized approach that will hinder states from successfully executing our elections. As I have said before, states are already working around the clock to keep their election infrastructure functioning during this national emergency. The last thing states need is for the federal government to impose time consuming mandates that will create chaos for election administrators and threaten the integrity of our electoral process. We do not know yet what the status of coronavirus will be in November, but we must work together to guarantee that public confidence in our democracy does not diminish in these difficult times.

Sincerely,



Rodney Davis
Ranking Minority Member
Committee on House Administration

Enclosure

Report: Political Weaponization of Ballot Harvesting in California
United States House of Representatives
Committee on House Administration
Ranking Member Rodney Davis

Introduction

Ballot harvesting is the practice of permitting any individual to collect and return an unlimited number of mail or absentee ballots without a documented chain of custody or proper state oversight. The issue of ballot harvesting was thrust onto the national stage following the defeat of multiple Republican California Members of Congress in the 2018 midterm elections. It was several days after the election, and after the counting of hundreds of thousands of ballots harvested under a new California law, when election observers and California voters started to raise red flags on what they witnessed.

The Committee on House Administration ("Committee"), and its Subcommittee on Elections, is responsible for all matters related to election law and is charged with investigating election irregularities. Under this charge, the Committee had official election observers in California in the days leading up to, and immediately following, the 2018 midterm elections. These observers reported that hundreds of ballots were returned by unknown individuals. Additionally, shortly after election day, allegations of fraud connected with ballot harvesting surfaced in North Carolina's 9th Congressional District. It was here that political operatives, through the ballot harvesting process, committed fraud on an unprecedented scale, nearly undetected.

These incidents, and the observations of official Committee election observers, have guided the work of Ranking Member Rodney Davis and the Republican staff of the Committee in the 116th Congress. While many states have taken appropriate measures to rein in the potential fraud and abuse that is associated with ballot harvesting, California has doubled down on the practice. Further, the State has been shielded from criticism and responsibility by a Democrat-controlled U.S. House of Representatives. The report that follows outlines the political weaponization of ballot harvesting in California, what has happened since the 2018 midterm election, and the work of the Committee Republicans to bring awareness to potentially the greatest threat to ballot integrity in this country.

2018 California Midterm Elections

The California state legislature made two drastic changes to state voting laws during the 2016 state legislative session, which ultimately had a profound effect on how California administered the 2018 midterm elections. First, Assembly Bill No. 1921 legalized the practice of unlimited ballot harvesting in the state.[1] This law permits any individual to return the mail ballot of another without any limitation as to the number of ballots collected, the relationship to the voter, or even relationship to candidates on the ticket. Further, the individual could be paid by

[1] 2016 Cal. Stat. AB-1921.

any source to collect these ballots, so long as the compensation is not "based on" the number of ballots returned.[2] Second, the California Voter's Choice Act ("VCA") established new policies intended to encourage counties to move to vote-by-mail.[3] The VCA requires that: (1) every voter be mailed a ballot; (2) in-person early voting be expanded; (3) voters be permitted to cast a ballot at any vote center within their county; and (4) ballot drop boxes be provided across the state. This led to traditional polling places closing in favor of only a handful of larger in-person voting centers.[4] These two seismic shifts in state election law were intended to encourage voters to vote-by-mail and, as a result, dramatically expand the use of unlimited ballot harvesting in the state. This strategy was implemented on a partisan basis to significantly affect the outcome of the 2018 midterm elections.

The unlimited ballot harvesting process in use throughout California should be differentiated from what is known as absentee or mail-in voting in other states. Absentee and mail-in voting began as a means for a resident of a state, who would be absent on Election Day or who could not physically cast a ballot at a polling location, to cast their vote ahead of time – with some states requiring an "excuse" to qualify.[5] This is a reasonable means to increase voter participation, unfortunately California has removed any means by which to reasonably supervise this process - leading to what we now know as ballot harvesting. This also gave rise to paid political operatives, known as "ballot brokers," recruiting and pressuring voters to vote by mail. These ballot brokers identify specific locations, such as large apartment complexes or nursing homes, where voters have traditionally voted for their party and build relationships with the residents. Operatives encourage, and even assist, these unsuspecting voters in requesting a mail-in ballot; weeks later when the ballot arrives in the mail the same ballot brokers are there to assist the voter in filling out and delivering their ballot. This behavior can result in undue influence in the voting process and destroys the secret ballot, a long-held essential principle of American elections intended to protect voters. These very scenarios are what anti-electioneering laws at polling locations are meant to protect against.[6] A voter cannot wear a campaign button to a polling location, but a political operative can collect your ballot in your living room? Furthermore, it has been reported that these ballot brokers intercept and destroy mail-in ballots of voters who traditionally vote against the brokers' preferred party.[7] These ballot brokers are the new Tammany Hall ward bosses, controlling the votes of their harvested area. Brokers are often added to campaign payrolls based purely on the number of ballots they promise to harvest.

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[2] Cal. Elec. Code §3017(e)(1).
[3] 2016 Cal. Stat. S.B. 450.
[4] Chris Nichols, *Goodbye Polling Place, Hello Vote Center. More California Counties Moving To Voter's Choice Model*, capradio, (Feb. 26, 2020), https://www.capradio.org/articles/2020/02/26/goodbye-polling-place-hello-vote-center-more-california-counties-moving-to-voters-choice-model.
[5] 17 states require voters to provide an excuse for voting by absentee ballots. Most commonly accepted excuses by states are being absent from the county on Election Day, the voter has a physical disability that prevents a trip to the polling place, or the voter is on active duty within the U.S. military. Absentee Ballot Rules, Vote.org, https://www.vote.org/absentee-voting-rules/.
[6] Electioneering is defined in California as "the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot within 100 feet of a polling place, a vote center, an elections official's office, or a satellite location under Section 3018 of the Elections Code.
[7] Brief for Candidate Dan McCready, *In the Matter of: Investigation of election irregularities affecting counties within the 9th Congressional District*, 10, 33 (N.C. State Bd of Elec. Feb. 12, 2019) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/7.1.2.1%20Exhibit%20(McCready%20Brief).pdf.

This unlimited ballot harvesting led to the defeat of seven Republican candidates in the California 2018 midterm election.[8] In California's 39th Congressional District, located largely in Orange County, the Republican candidate, Young Kim, was leading in the vote count on election night and in the week that followed. She even traveled to Washington D.C. and participated in New Member Orientation. Two weeks later, the Democrat challenger was declared the winner after 11,000 mail ballots were counted, many of which were harvested. These ballots heavily favored the Democrat candidate at a much higher rate than previously counted ballots. Similarly, in California's 21st Congressional District, a historically conservative district in the Central Valley, former Republican Congressman David Valadao led by nearly 5,000 votes on election night. Major news outlets even declared him the winner based on statistical probability.[9] In the weeks that followed, harvested ballots were counted and broke overwhelmingly for the Democrat challenger T.J. Cox, ousting former Congressman Valadao by 862 votes.[10]

Discrepancies Between Election Night Margins and Final Vote Margins

Cong. District	Election Night Vote Tally	Election Night Vote Margin[11]	Final Vote Result	Final Vote Margin[12]	Post-Election Night Margin
CA-10	Denham (R): 56,701 Harder (D): 55,414	Denham (+1,287)	Harder (D): 115,945 Denham (R): 105,955	Harder (+9,990)	Harder (+11,277)
CA-21	Valadao (R): 35,416 Cox (D): 30,577	Valadao (+4,839)	Cox (D): 57,239 Valadao (R): 56,377	Cox (+862)	Cox (+5701)
CA-25	Hill (D): 83,662 Knight (R): 79,545	Hill (+4,117)	Hill (D): 133,209 Knight (R): 111,813	Hill (+21,369)	Hill (+17,252)
CA-39	Kim (R): 76,956 Cisneros (D): 73,077	Kim (+3,879)	Cisneros (D): 126,002 Kim (R): 118,391	Cisneros (+7,611)	Cisneros (+11,490)
CA-45	Walters (R): 94,998 Porter (D): 88,765	Walters (+6,233)	Porter (D): 158,906 Walters (R): 146,383	Porter (+12,523)	Porter (+18,756)
CA-48	Rouda (D): 91,750 Rohrabacher (R): 89,068	Rouda (+2,682)	Rouda (D): 157,837 Rohrabacher (R): 136,899	Rouda (+20,938)	Rouda (+18,256)
CA-49	Levin (D): 76,135 Harkey (R): 69,031	Levin (+7,104)	Levin (D): 166,453 Harkey (R): 128,577	Levin (+37,876)	Levin (+30,772)

[8] In the first election where ballot harvesting was legal Democrats flipped multiple seats previously held by Republicans including: Representative Jeff Denham from the 10th district, Representative David Valadao from the 21st district, Representative Steve Knight from the 25th district, Candidate Young Kim for the 39th district, Representative Mimi Walters from the 45th district, Representative Dana Rohrabacher from the 48th district, and Candidate Diane Harkey from the 49th district (formerly held by Darrell Issa). *See* Michael R. Blood and Stephen Ohlemacher, *Democratic Sweep in California raises GOP suspicion*, AP (Nov. 30, 2018), https://apnews.com/3cfd93f7859149809949bd611287154e.

[9] Rory Appleton, *How did TJ Cox erase a 25-point primary loss to become the Valley's next congressman?*, The Fresno Bee, (Dec. 12, 2018) https://www.fresnobee.com/news/politics-government/politics-columns-blogs/political-notebook/article222436900.html.

[10] *Id.*

[11] Rob Pyers is the Research Director for the nonpartisan elections data organization California Target Book. @rpryers, TWITTER (Nov. 7, 2018, 11:25 AM), https://twitter.com/rpyers/status/1060206738840838145.

[12] Statement of the Vote, *General Election*, at 51-60, Cali. Secr'y of State, (2018), https://elections.cdn.sos.ca.gov/sov/2018-general/sov/2018-complete-sov.pdf.

In Orange County alone, 250,000 mailed ballots were turned in on Election Day.[13] Orange County Registrar of Voters, Neal Kelley, indicated to the media that some individuals appeared at his office to deposit "maybe 100 or 200" ballots at a time.[14] Maintaining and transporting hundreds of ballots is an enormous responsibility even for election officials, much less a private citizen. There is additional concern for ballot security when the individual collecting ballots can be paid by outside, nongovernment organizations, as they can in California. In the 2014 general election, California saw 4,547,705 mail-in ballots cast; that number nearly doubled to 8,302,488 in 2018.[15] This upward trend of mail-in voting, as well as the increasing number of harvested ballots, was the intent of the California State Assembly in 2016. In-person voting ensures safeguards that cannot be duplicated when picking up ballots. The expected result of such a system that lends itself to fraud and abuse could also be seen on the other side of the country in the same midterm election.

Use of Mail Ballots Increased from 2014 to 2018[16]

	Mail Ballots Cast	**All Ballots Cast**	**% Of Mail Ballots**
2014 General Election	4,547,705	7,513,972	60.52%
2018 General Election	8,302,488	12,712,542	65.31%

Ballot Harvesting in North Carolina and Other States

California was not the only state that saw ballot harvesting in the 2018 election cycle. In North Carolina, where ballot harvesting is illegal, political operatives tampered with thousands of harvested ballots leading to the appropriate refusal of the State Board of Elections to certify the election.[17]

In the days after the election for North Carolina's 9th Congressional District, affidavits were submitted by voters and by individuals who worked for McRae Dowless, a political consultant to the Republican candidate. One voter attested that she handed her signed absentee ballot over to Dowless but left her ballot blank. [18] One individual hired by Dowless to pick up ballots testified that she was instructed to pick up ballots and deliver them to Dowless's office, where he allegedly had stacks of absentee ballots on his desk.[19] Additionally, an analysis of absentee ballots received over the course of the election concluded that the rate of unreturned

[13] John Wildermuth et al., *California's late votes broke big for Democrats. Here's why GOP was surprised*, San Francisco Chronicle, (Nov. 30, 2018), https://www.sfchronicle.com/politics/article/California-s-late-votes-broke-big-for-13432727.php.
[14] Wildermuth, supra.
[15] *Election Statistics*, California Secretary of State, https://www.sos.ca.gov/elections/statistics/.
[16] *Id*.
[17] N.C. Gen. Stat. Ann. § 163-226.3, "It shall be unlawful: (5) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voters' near relative or the voter's verifiable legal guardian."
[18] Brief for Candidate Dan McCready at App. A (p. 1) supra.
[19] *Id*.

absentee ballots was "significantly irregular," probably affecting the outcome of the election.[20] It was at this time the Committee began to examine the election. If the race was challenged under the Federal Contested Elections Act, the Committee would have the primary responsibility of investigating and recommending disposition to the U.S. House of Representatives, who could vote to seat either candidate or order a new election.[21]

Ultimately, federal intervention was unnecessary, as the North Carolina State Board of Elections declined to certify the result of North Carolina's 9th Congressional election "in light of claims of numerous irregularities and concerted fraudulent activities related to absentee by-mail ballots and potentially other matters," and took the unprecented step of ordering a new election to be held.[22] The Board found that Dowless and his staff illegally collected absentee ballots for his candidate, discarded absentee ballots, were witnesses to hundreds of absentee ballots, accused of attempting to submit unsealed and unmarked ballots, and directed his associates to avoid collecting ballots in African-American neighborhoods.[23] All of this in an effort to harvest ballots on behalf of his candidate and suppress votes for the other candidate.

As a result of the fraud in North Carolina's 9th Congressional District, the state strengthened its ballot harvesting statute by no longer making public the names of voters who have requested absentee ballots until Election Day.[24] This was done to prevent those who would engage in illegal ballot harvesting from being able to target potential votes to count or discard. It would also prevent potential ballot harvesters from filling out standard absentee ballot request forms and presenting them to voters for their signature, another common tactic used by political operatives.

North Carolina is not the only state that places restrictions on ballot harvesting. In Arizona, it is a crime for a third party to collect and deliver another person's ballot, unless that person is a government official engaged in their duties, a family member, household member, or caregiver.[25] Prior to 2016, California limited ballot harvesting to a voter's spouse, child, parent, grandparent, grandchild, brother, sister, or person residing in the same household. California then chose to cast aside these commonsense limitations in favor of a system ripe for fraud with no safeguards or oversight. In Arkansas, mailed ballots can be returned by someone other than the voter, but no one individual can return more than two ballots.[26] Maine, Maryland, Nebraska, New Jersey, North Dakota, and South Carolina prohibit a candidate or any individual working for a candidate to collect and deliver ballots.[27] An additional nine states limit the delivery of an

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[20] *Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District*, Order, 35, 46 (N.C. State Bd. of Elec. Mar. 13, 2019) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/7.1.2.1%20Exhibit%20(McCready%20Brief).pdf.

[21] *See* 2 U.S.C. §§ 381-396.

[22] *Order* 10, 12, 35, 46 (N.C. State Bd. of Elec. Mar. 13, 2019) supra. Press release, North Carolina Board of Elections, *State Board to hold public hearing into irregularities in 9th Congressional District contest*, (Nov. 11, 2018) https://www.ncsbe.gov/Press-Releases?udt_2226_param_detail=218.

[23] *Id*. at p. 12.

[24] 2019 N.C. S. 683.

[25] Ariz. Rev. Stat. § 16-1005(H), (I).

[26] Ark. Code § 7-5-411.

[27] *Returning Absentee Ballots*, NCSL, (Feb. 27, 2019), https://www.ncsl.org/research/elections-and-campaigns/returning-absentee-ballots.aspx.

absentee ballot to the voter's family members.[28] The number of states enacting commonsense safeguards should increase as state legislatures continue to understand how political operatives are able to exploit loopholes in absentee and mail-in ballot return laws.

Committee on House Administration Initiatives on Ballot Harvesting

Legislation

Ranking Member Rodney Davis has challenged Committee Democrats ("the Majority") to examine the issue of ballot harvesting at every conceivable point in the 116th Congress. However, this effort has been met with resistance by the Majority which is composed of six Democrat Members, three of which represent California Districts: Chairperson Zoe Lofgren (CA-19), Representative Susan Davis (CA-53), and Representative Pete Aguilar (CA-31). In January 2019, Ranking Member Davis sent a letter to the Committee's Subcommittee on Elections Chair, Representative Marcia Fudge (D-OH), requesting that the work of the newly-formed elections Subcommittee be focused on "identifying the real problems facing our elections systems such as lack of safeguards states have in place as it relates to non-traditional voting."[29] This request was ignored, as the focus of the Subcommittee has instead been on reauthorizing a portion of the Voting Rights Act struck down by the U.S. Supreme Court.[30]

The Democrat Majority began their partisan legislative agenda with H.R. 1, the "For the People Act" in January 2019, with no input from the Minority.[31] This legislation would upend nearly every semblance of our state-run election system in favor of a federal takeover.[32] At committee markup, the Majority rejected an attempt by the Minority to add an amendment that would prohibit the practice of ballot harvesting. Representative Mark Walker (NC-06), a member of the Committee from North Carolina, offered a ballot harvesting amendment stating: "[W]e cannot create election reform aimed at making our system more secure without tackling the clear problem that currently exists with ballot harvesting. It opens the door to ballot manipulation by allowing an unsecure delivery service from your home to the polling precinct."[33] H.R. 1 passed out of Committee on a pure party line vote, with no Republican amendments adopted.[34]

At a Rules Committee meeting the same week a contingent of six California Republican members offered an amendment to prohibit the practice of ballot harvesting, as they also had seen firsthand how the practice negatively impacted their state. This amendment, jointly offered by Representatives Calvert, LaMalfa, Nunes, Hunter, McClintock, and Cook, was again rejected

[28] *Id.*
[29] Letter from Rodney Davis, Ranking Member, Subcomm. on Elec. to Marcia Fudge, Chairwoman, Subcomm. on Elec., (Jan. 4, 2019) (on file with the Committee).
[30] Voting Rights and Election Administration in the United States of America, Subcomm. on Elec., Committee on House Administration, (Nov. 2019), https://cha.house.gov/sites/democrats.cha.house.gov/files/documents/Voting%20Rights%20and%20Election%20Administration%20in%20America.pdf.
[31] For the People Act of 2019, H.R. 1, 116th Cong. (2019).
[32] U.S. Const. art I, § 4.
[33] Press Release, Committee on House Administration Republicans, *What H.R. 1 Neglects*, (Mar. 7, 2019) https://republicans-cha.house.gov/press-release/what-hr-1-neglects.
[34] *See* H.R. 1.

out of hand by all the Democrats on the Rules Committee.[35] Over the next three days Ranking Member Davis led efforts to oppose H.R. 1, and specifically ballot harvesting, on the House Floor for nearly 12 hours and debated over 50 amendments.[36] H.R. 1 passed the U.S. House of Representatives on the third day without any Republican support.[37]

The Majority followed one divisive bill with another, H.R. 2722, the "SAFE Act," in late June of 2019.[38] The SAFE Act purports to address election security through grant programs and state requirements for voting systems, yet fails to address the glaring threat ballot harvesting poses to the security of our elections. Again, at committee markup Representative Walker offered an amendment to prohibit the practice of ballot harvesting which failed along party lines. A roll call vote requested by Ranking Member Davis shows that every Democrat voted against the amendment.[39] Just days later, Democrats rammed the bill through the Rules Committee, and rejected two amendments on ballot harvesting, one offered by Representative Walker to prohibit the practice, and the other by Representative Calvert to simply limit the number of ballots allowed to be collected to 20.[40] Neither amendment was debated, or even considered. On the House Floor, Ranking Member Rodney Davis offered the Motion to Recommit (MTR), a final effort to amend the legislation.[41] The MTR would have amended the bill to require the chief election official in each state to disclose the identity of any foreign national with access to certain voting materials, including ballots, thus ensuring that, at the very least, the names of foreign nationals who harvest ballots in federal elections would be disclosed. This would allow for the targeting of foreign adversaries who seek to interfere in our elections. This motion failed on a party line vote with two California Members, Chairperson Lofgren and Representative Aguilar, speaking against the motion in a clear effort to protect a voting practice that gives their party a political advantage in their state. H.R. 2722 passed the House with virtually no Republican support.[42]

In October of 2019, the Majoirty then considered H.R. 4617, the "SHIELD Act," the third partisan election bill.[43] The stated goal of this legislation is to limit outside interference in campaigns, but failed to address how ballot harvesting makes our elections vulnerable to tampering by foreign adversaries. Ranking Member Davis offered an amendment at the committee markup to ban the practice of ballot harvesting.[44] In debate, Minority Members encouraged the Majority to consider this amendment, but the Majority again dismissed it.

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[35] H.R. 1 For the People Act of 2019, Amendment 130, Committee on Rules, U.S. House of Reps., (Mar. 5, 2019), https://rules.house.gov/bill/116/hr-1.
[36] *See* House Session at 01:05, CSPAN, (Mar. 6, 2019), https://www.c-span.org/video/?458431-2/us-house-debates-voting-rights-campaign-finance-ethics-bill.
[37] H.R. 1 passed the House on March 8, 2019 with every Democrat voting in support minus a single democrat who did not vote. *Final Vote Results for Roll Call 118*, Clerk of the U.S. House of Reps., (Mar. 8, 2019), http://clerk.house.gov/evs/2019/roll118.xml.
[38] SAFE Act, H.R. 2722, 116th Cong., (2019).
[39] H.R. Rep No. 116-129, at 31 (2019), https://www.congress.gov/116/crpt/hrpt129/CRPT-116hrpt129.pdf.
[40] H.R. 2722 SAFE Act, Amendment 5, Committee on Rules, U.S. House of Reps., (Jun. 24, 2019), https://rules.house.gov/bill/116/hr-2722.
[41] *See Final Vote Results for Roll Call 427*, Clerk of the U.S. House of Reps., (June 27, 2019), http://clerk.house.gov/evs/2019/roll427.xml.
[42] *Id.*
[43] SHIELD Act, H.R. 4617, 116th Cong., (2019).
[44] H.R. Rep No. 116-246, at 24 (2019), https://www.congress.gov/116/crpt/hrpt246/CRPT-116hrpt246.pdf.

Ranking Member Davis requested a recorded vote and the amendment failed with every Democrat voting against.[45] Just days later, Democrats rammed the legislation through the Rules Committee, rejecting Representative Calvert's amendment to prohibit the practice of ballot harvesting.[46] Once again, election reform legislation was passed in the House of Representatives with zero Republican support.[47]

Efforts by Ranking Member Davis did not stop at amending Democrat legislation. Shortly after the Committee concluded its meeting on the SHIELD Act, Ranking Member Davis introduced H.R. 4736, the "Honest Elections Act," which would solve the problem the SHIELD Act purports to address—meddling by foreign adversaries in our elections—by targeting the foreign powers directly through updates to the Foreign Agent Registration Act.[48] The bill also requires each state to forfeit all grant assistance through the Help America Vote Act ("HAVA") unless the state limits ballot harvesting to only family members, household members, or caregivers of the voter. This policy would help to secure the integrity of absentee and mail ballots while providing flexibility to those that require assistance in casting their ballot. To date, the Majority has refused to mark up this important piece of legislation, or any election-related legislation introduced by the Minority.

Oversight

On November 1, 2019, Ranking Member Davis sent a letter to every California Registrar, the county official responsible for administering elections in California, asking each official a series of questions directed at how she or he would implement ballot harvesting at the county level.[49] This letter contained requests for basic information on harvested ballots such as:

- What personal qualifications must ballot harvesters meet in order to turn in vote-by-mail ballots (e.g., they must be a U.S. Citizen, California resident, etc.)?
- Are ballot harvesters required to disclose to the voter who or what organization they work for before collecting a vote-by-mail ballot?
- Is there any limit to the number of vote-by-mail ballots a ballot harvester could turn in?
- If a voter discovers that his or her ballot was not turned in after it was collected, what recourse does the voter have to ensure that his or her vote is counted?

[45] *Id.*
[46] H.R. 4617 SHIELD Act, Amendment 28, Committee on Rules, U.S. House of Reps., (Oct. 22, 2019), https://rules.house.gov/bill/116/hr-4617.
[47] *See Final Vote Results for Roll Call 583*, Clerk of the U.S. House of Reps., (Oct. 27, 2019), http://clerk.house.gov/evs/2019/roll583.xml.
[48] Honest Elections Act, H.R. 4736, 116th Cong., (2019).
[49] Letter from Rodney Davis, Ranking Member, Comm. on House Admin. to Rebecca Cambell, Clerk, Kings County Cal., (Nov. 1, 2019) (on file with the Committee).

California Secretary of State Alex Padilla sent a response letter on behalf of the county registrars that gave generic information related to voting by mail in California but did not address the local administration of ballot harvesting.[50] Ranking Member Davis sent a response letter to Secretary Padilla on January 15, 2020, outlining concerns related to the chain-of-custody of ballots and requested to meet with the Secretary to discuss ballot harvesting. These requests have gone unanswered by the Secretary of State.[51] The failure of Secretary Padilla to place safeguards around ballot harvesting, including simply adding measures to count the number of harvested ballots, compelled the Committee Minority to begin monitoring California's elections starting with the March 3rd primary and special elections.

Minority staff members traveled to California to observe and document how California election officials administered the 2020 primary election, and special elections for California's 25th and 50th Congressional Districts. Minority Staff left California with two main observations:

> Observation 1. California's newly legalized practice of ballot harvesting lacks any oversight mechanisms to prevent and detect fraud and is a highly irregular means of collecting and tallying votes; and
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> Observation 2. Los Angeles County lacks adequate security protocols in its custody of vote-by-mail ballots.

Observation 1:

The Los Angeles County Registrar's Office employed the use of a large bin outside of its office building to serve as a deposit location for vote-by-mail ballots, with no election officials or registrar staff present to supervise. One concern with this practice is that there is no way to track who drops off ballots, whether they are affiliated with a campaign organization, or what their relationship is to the voters whose ballots they have been entrusted with. Another concern is that dropping off huge quantities of ballots raises the specter for potential fraud, because one individual has become responsible for the votes of hundreds. Under the current system, there is no way to track the quantity of ballots that are dropped off at one time. Minority staff was informed, and it has been widely reported, that individuals dropped off hundreds of ballots at a time.[52]

The stated purpose behind the passage of California's law legalizing ballot harvesting in 2016 was to increase voter participation and to eliminate obstacles to voting for some voters.[53] This is a noble goal, and a goal that the Minority commends, if safeguards are established and maintained. However, ballot harvesting in California has no safeguards. There is no front-end

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[50] Letter from Alex Padilla, Sec'y. of State, California to Rodney Davis, Ranking Member, Comm. on House Admin., (Nov. 8, 2019) (on file with the Committee).
[51] Letter from Rodney Davis, Ranking Member, Comm. on House Admin., to Alex Padilla, Sec'y of State, California, (Jan. 15, 2020) (on file with the Committee).
[52] Wildermuth, supra.
[53] Secretary of State Alex Padilla was an avid supporter of A.B. 1921. See Generally Press Release, Assemblywoman Lorena Gonzalez, *Governor Signs Bill to Let Voters Unable to go to Polls to Designate Another Person to Return Ballot*, (Oct. 2016), https://www.eastcountymagazine.org/governor-signs-bill-let-voters-unable-go-polls-designate-another-person-return-ballot.

disclosure requirement so voters know that the individual at their door is representative of a candidate or political party. In addition, there is no back-end disclosure requirement so the county or state knows who is dropping off harvested ballots or how many were dropped off. There is also no requirement that a chain-of-custody is documented for harvested ballots. The lack of safeguards invites fraud and coercion, and invites political operatives to legally game the system for their own benefit. The foundation of our democracy is public confidence in the security and integrity of our elections, and this practice in California only serves to weaken this confidence.

Observation 2:

As members of the public and election observers, Minority Staff went to the Los Angeles County Registrar's office, where all mail-in ballots are sent to be prepared for processing. Staff observed unopened vote-by-mail ballots stacked on shelves in the room open to the public. Thousands of active mail-in ballots sat on carts near the door, under no supervision, and not under lock and key. In addition, there was no way to cearly distinguish election officals from the voting public and observers.

The industry standard for returned mail ballots is to secure them in a locked room or container to ensure that they are not subject to tampering. The Election Assistance Commission's (EAC) Election Management Guidelines include a number of provisions on best practices for elections officials to follow in order to meet this standard: "ballot boxes must be locked and secure at all times. They should be located in an area that can be viewed and monitored by authorized personnel." And, "The security of paper ballots includes security in the election office facility and at the polling place on Election Day."[54] The security of mail ballots is paramount to administering a successful election. Once counties receive returned mail ballots, they should always secure them in a way to ensure they are not subject to tampering. What Minority staff observed in California does not adhere to EAC best practices. California must adopt greater safeguards to protect ballots once they are in their possession.

Recent Developments

In the weeks following California's March 3rd primary, the coronavirus rapidly spread across the United States. States with upcoming primaries have had to quickly make adjustments to their voting procedures. During this time, Speaker Pelosi (CA-12) and House Democrats released their own proposed legislation in response to the pandemic.[55] Included were large pieces of their previously introduced election legislation, H.R.1, H.R. 2722, and H.R. 4617, none of which have anything to do with the coronavirus. Chief among the federal mandates included in Speaker Pelosi's recent proposals is a provision to nationalize ballot harvesting before the November 2020 General Election.[56]

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[54] Election Management Guidelines, *Physical Security*, at 23, EAC, https://www.eac.gov/sites/default/files/eac_assets/1/6/260.pdf.
[55] *See* Take Responsibility for Workers and Families Act, H.R. 6379, 116th Cong., (2020).
[56] Press Release, Committee on House Administration Republicans, *Democrats Take Advantage of National Emergency to Federalize Elections*, (Mar. 23, 2020) https://republicans-cha.house.gov/media/press-releases/democrats-take-advantage-national-emergency-federalize-elections-0.

In response to the pandemic and in accordance with social distancing guidelines, California Governor Gavin Newsome issued a state-wide shelter-in place order.[57] Additionally, the Governor ordered election officials to mail a ballot to every voter for the upcoming May 12th special election to fill California's 25th Congressional District seat and every voter statewide for the general election in November.[58] Even in a pandemic, with strict social distancing measures in place, Governor Newsom failed to restrict ballot harvesting – which ostensibly has no inherent value if every eligible voter receives a mail-in ballot with a prepaid return envelope and can vote by mail. By allowing campaign workers to pick up ballots from voters' homes, the Governor is permitting these campaign workers to violate the statewide directive that nonessential workers must stay home, and it is likely these campaign workers will come within six feet of voters, violating social distancing practices. Allowing ballot harvesting in light of this pandemic and the Governor's shelter-in-place order appears to be solely politically motivated.

Conclusion

Elections are the foundation of our democracy, and Americans have a stake in ensuring they are conducted fairly and are free from fraud or manipulation. Ranking Member Davis, in addition to other Republican Members, put forth numerous proposals to prevent the political weaponization of ballot harvesting in California. Democrats have repeatedly refused to engage on the issue, and have dismissed all efforts to address the issue. Further, Ranking Member Davis reached out to every California Registrar asking commonsense questions about ballot harvesting at the county level. Secretary Padilla took it upon himself to issue a non-answer on their behalf. This apparent lack of state oversight compelled Minority Staff to observe California's primary election and special elections. Minority Staff were able to observe first-hand and hear through conversations with California voters that the practice of ballot harvesting is widespread and increasing in California.

Congress should ensure that elections are conducted in a manner that does not disenfranchise voters and invite fraud. No other state allows for fraudulent voting practices like California's ballot harvesting provisions. The susceptibility to fraud and abuse harms not only individual voters, but jepordizes the entire electoral process. It is vital to understand the damage ballot harvesting has on election integrity, and we must all work together to ensure steps are taken to mitigate this threat.

Commonsense reforms, such as restricting who may turn in another's ballot, requiring a documented chain-of-custody of each ballot, requiring a record of the individual who is harvesting ballots, and recommending that county officials count and track harvested ballots are proposals that address the Minority's primary concerns. Ranking Member Davis, in conjunction with this report, has introduced a bill that requires each state to forfeit all grant assistance through the Help America Vote Act unless the state limits ballot harvesting by individuals other than family members, household members, or caregivers of the voter.

[57] Cal. Exec. Order No. N33-20, (2020).
[58] Cal. Exec. Order No. N34-20, (2020); Cal. Exec. Order No. N-64-20, (2020).

The potential for fraud and abuse created by ballot harvesting harms not only individual voters, but jeopardizes the integrity of the entire electoral process and we must all work together to ensure steps are taken to address this threat. Partisan politics should be put aside, and this legislation should be marked up immediately.