

**June 16, 2020**

**To**:

**From**: David Crow, Laurie-Ann Flanagan, David Beaudreau

**Re**: **Subcommittee on Elections Hearing: The Impact of COVID-19 on Voting Rights and Election Administration: Ensuring Safe and Fair Elections.**

On Thursday, June 11, the House Subcommittee on Elections held a hearing to discuss the impact of COVID-19 on voting rights and election administration in an effort to ensure safe and fair elections.

**Members Attended:**

Chairman Marcia Fudge (D - OH)

Representative Rodney Davis (R-IL)

Representative G.K. Butterfield (D-NC)

Representative Peter Aguilar (D-CA)

Representative Barry Loudermilk (R-GA)

Representative Susan Davis (D-CA)

**Opening Statements:**

Chairman Fudge began by addressing how limited access to polling places due to COVID-19 could jeopardize the integrity of the upcoming election. She stated that the committee must work to augment election procedures and confront the prospect of a national election amidst the global pandemic. She firmly stated that people should not have to risk their health to exercise their right to vote, but noted that in many states, reduced polling locations caused severe lines and exposure to the virus. She pointed out that mail-in voting, with its infrequent instances of voter fraud, is not a new practice and should be adopted in all states. Lastly, she highlighted the overlap between communities at risk of voter suppression and those that are disproportionately vulnerable to COVID-19, and the necessity of the $3.6 B allocated within the Heroes Act for mail-in voting infrastructure.

Ranking Member Davis began by challenging the changes proposed by the majority on grounds that they might jeopardize election integrity and have nothing to do with the spread of the virus. He noted several changes such as provisions for same-day voter registration and ballot-harvesting incentives. He indicated that he was open to other ideas pertaining to election reform such as the four pieces of legislation he collaborated on with his colleagues, but that the states’ electoral processes need to be respected when dealing with the challenges posed. He stated that live ballots should not be mailed to people who did not request them, especially in states that do not manage voter registration offering an example from Los Angeles which has 1.6 M ineligible voters on the rolls. He claimed that forcing mail-in voting mechanisms on all states is presumptive considering that less than 4% of voters vote absentee along with the lack of equipment needed to facilitate such a transition on short notice. Lastly, he noted that there is insufficient public information about mail-in voting which results in two-thirds of votes cast by mail being rejected by election officials for a variety of reasons.

**Witnesses:**

**Panel 1:**

* **The Honorable Marcy Kaptur**, Member of Congress, Washington D.C.
  + Representative Kaptur used her statement to recount her experience with electoral proceedings amidst the pandemic, having overseen a primary four days after the state of national emergency was declared. She noted that voter turnout plummeted, voters and poller workers were unsure as to how voting would proceed, there was widespread confusion about the mail-in, mail-out process, all together resulting in a 20% turnout, compared to the 43% turnout her state witnessed in 2016. She urged the state officials to wisely make use of the $400 M appropriated for voting procedures.
* **The Honorable Gwen Moore**, Member of Congress, Washington D.C.
  + Representative Moore shared her experience with Wisconsin’s infamous primary. Despite the state’s efforts to get ahead of potential electoral obstacles caused by COVID by expanding opportunities to vote by mail, the WI Supreme Court enjoined the Democratic governor’s decision to postpone elections and carry-out in person voting. The result was mass confusion, and several people jeopardizing their health in order to vote. The United States Supreme Court blocked the decision to return absentee votes, many of which were not counted due to incorrect stamps or postage. The local news deemed the outcome “the most undemocratic election in history.” She concluded by underscoring the need for both in-person opportunities and absentee resources to keep the polls open and the people safe.

**Panel 2:**

* **Ms. Kristen Clarke**, President & Executive Director, Lawyers' Committee for Civil Rights Under Law
  + Ms. Clarke stated that in light of the primary elections observed in GA, NC, NV, ND, and WV, it is clear that many states are not equipped and unprepared to return to in-person voting, nor do they have the resources to handle the volume of needed mail-in voting to supplement the lack of polling officials. She described the case of Georgia’s primary, characterizing it as the poster child of racial disenfranchisement, with long lines past midnight, last minute polling place changes, poor equipment, lack of paper back-ups, and failure to provide absentee ballots to those who requested them. Additionally, she called for an additional $3.6 B on top of the $400 M from the CARES Act for states, as well as appropriation of the $89 B requested by the U.S. Postal Services leadership.
* **Ms. Sherrilyn Ifill**, President & Director - Counsel, NAACP Legal Defense & Educational Fund., Inc. (LDF)
  + Ms. Ifill continued the description of ineffective in-person polling efforts conducted in Wisconsin, noting that 71 people contracted COVID-19 while voting or managing polls and that a similar figure will likely be observed following the recent Georgia election. She criticized the onerous absentee voting requirements in southern states, citing the need for 2 third-party witnesses, a photocopy of an ID when mailing in ballots, or alternatively a notarization when voting in Louisiana. She conceded that absentee voting will not replace safe and accessible in-person options, calling for a “both-and” solution to protect the right to vote. She ended her statement by voicing her support for the Grateful for Heroes Act which would provide the aforementioned $3.6 B in funding for absentee and early in-person voting, as well as advanced online registration, funding for pollsters, and robust community education so that people are aware of their voting options and how they work.
* **Mr. Lawrence Norden**, Director, Election Reform, Democracy, Brennan Center for Justice
  + Mr. Norden echoed Ms. Ifill’s calls for increased funding; focusing on the need for aid in voter registration, noting how registration offices are closed, and shutdowns have decreased the pushes for voter registration. He pointed out that online registration systems are outdated and not designed for the volume of use that will be required by the upcoming election, citing the system failures of GA, FL, and WI already, as well as the need for all voting options to be secure. He concluded by stating that although mail-in voting options are sub-optimal, they need to be bolstered as they will be experiencing increased loads come November as evidenced by the 16-fold and 25-fold increases in Pennsylvania and Georgia. He noted that while 38 states allow for no-excuse absentee voting, that option will need to be federally applied across the board. He also stated that the state and federal governments need to ensure that poll workers are safe by providing PPE, disposable pens, and other supplies to polling places.
* **Mr. Mark Dimondstein**, President, American Postal Workers Union
  + Mr. Dimondstein opened his statement by conferring the confidence of the American people in the USPS, which have 91% favorability across both parties. He stated that the notion of vote-by-mail is nothing new for the Postal Service, that it works, increases voter participation, creates a paper trail, saves money on expensive equipment, cannot be hacked, and is absent of increased voter fraud. He noted that due to the anticipated unavailability of poll workers, robust plans for vote-by-mail will make the difference for millions of people’s access to ballots. He stated that in order to guarantee enfranchisement, however, the Postal Service will need increased financial support, especially considering that it traditionally receives no tax dollars. He recapitulated his testimony to the House Oversight Committee which contained figures of significant revenue lost to COVID-19 on top of the ongoing losses witnessed in the past decade. We ended his statement by stating that the Postal Service will run out of cash this year without the appropriated emergency relief from congress proposed by the Heroes Act.
* **The Honorable R. Kyle Ardoin**, Secretary of State, State of Louisiana
  + Secretary Ardoin stated that Louisiana is no stranger to natural disaster amidst election before, per hurricanes Katrina, Gustav, and Ike. He overviewed Louisiana state’s process by which the Secretary of State is allowed to petition the Governor to postpone elections which he has done along with submitting a proposed emergency election plan to the state legislature to be approved by the governor. The plan he submitted passed with bipartisan support allowing for an additional 6 days of advanced in-person voting on top of the typically allocated 7 days, provision or emergency COVID absentee ballot applications to cover high-risk demographics, provisions of hand sanitizer, masks, and gloves to poll workers, and sanitization of polling machines. He noted that another plan will need to be submitted for the upcoming elections in November and asked for one-time funds to ensure election security instead of radically changing the familiar electoral system in place.
* **The Honorable John H. Merrill**, Secretary of State, State of Alabama
  + Secretary Merrill’s opening testimony focused on diffusing accusations of voter suppression within his state, citing record breaking voter registration efforts and turnout in recent years. He transitioned to discuss potential problems of mail-in ballots, referencing instances of excessive volumes of ballots being mailed to vacant households in California, and Georgia, as well as the millions of mail-in ballots that went uncounted in the 2018 elections. He concluded by stating that adopting the suggested mail-in voting procedures would increase the cost for Alabama by $45 M, questioning the efficacy of such a policy when only 4% of voters currently utilize the mail-in option.

**Questions:**

Representative Butterfield began by asking Secretary Ardoin what he meant in his opening statement by saying “[We] cannot cede election authority to D.C. politicians.” Mr. Ardoin responded that he was referring to the burden of cost imposed by the suggested impractical vote-by-mail procedures. Butterfield rhetorically wondered if the burden would still exist if the federal government covered 100% of the necessary costs to facilitate the volume of mail-in ballots expected. He then asked Secretary Merril on what grounds the federal government could interfere with state elections. Mr. Merrill responded that states need to run their own elections unless there are violations of trust or confidence, or efforts to suppress any individuals’ right to vote.

Representative Davis asked the Secretaries of State if they have the infrastructure to support a federal election entirely by mail, and if not, whether they think it is possible for all 50 states to convert to such a system by November. Both Secretaries said no, and that conversion in the short time period would be nearly impossible. He asked what percentage of ballots cast in 2018 were via mail. They respond 0.9% and almost 4% for Louisiana and Alabama respectively. Representative Davis asked about accessibility to absentee ballots and protections against ballot harvesting. Both secretaries respond that they have absentee ballots as well as rules on the books to prevent ballot harvesting. He asked if they believe that states need federal assistance past the funding they have already received. They both firmly respond no.

Representative Aguilar noted that mail-in ballots are statistically exposed to less fraud than indicated by the minority members of the committee, then asked the panel what election officials can do to ensure safety and integrity of the voting process in light of restrictions caused by the pandemic. Ms. Clarke said that the approach will need to vary from state to state, but that the focus should be on increasing access to both in person and mail-in ballot options. Mr. Norden concurred with the Congressman’s assessment as well as Ms. Clarke’s call for increased access, adding that it is more likely to be struck by lightning than to experience in-person or mail-in voter fraud.

Representative Loudermilk asked Secretary Ardoin to describe the modified electoral process proposal he submitted, and what other states can do to handle elections during the pandemic. Secretary Ardoin responded that states should increase the number of election commissioners to verify the volume of absentee applications and ballots to prevent surplus ballots from being sent to and counted from a single address.

Representative Davis asked Secretary Merrill what success looks like for use of mail-in ballots. Secretary Merrill said Alabama is a benchmark for success, using qualified photo ID’s when mailing ballots, they have experienced increased, but manageable, numbers of absentee ballot submissions and applications. She asked about the constraints of requiring third party witnesses amidst COVID. Secretary Merrill responded that people have had no trouble protesting, so they should have no trouble contacting their neighbor to get their vote out to enact change. She asked Secretary Merrill about how many ballots were cast in the time frame where 6 ballots were categorized as fraudulent. He responded that millions of ballots were cast, but that any instance of fraud is equivalent to disenfranchising a citizen.

Representative Raskin asked Ms. Ifill how the committee can address the plummeting rates of voter registration due to COVID. She responded that there needs to be increased access to streamlined online voter registration and that the requirement for a notary or third-party witness should be removed from the absentee voting process.

The Chairman reprimanded the Secretaries of State for their lack of cooperation with the federal government and their focus on fraud when it sounds like a localized state problem that distracts from the actual issue of voter suppression, noting that the record will remain open for 15 days after the date of the hearing.