



ENSURING VOTER ACCESS WHILE PROTECTING ELECTION INTEGRITY

When are restrictions on voter access justified?

Overview

In the aftermath of the 2020 election, five states have adopted legislation that significantly increases burdens on voters, and another 24 states have seen such legislation pass in at least one house. At the same time, at least 10 states have sought to expand access to voting, maintaining that their electoral processes are secure and that voter access can be enhanced without risking the integrity of elections.¹

Debates about this question are not new: Governments are obliged both to protect the integrity of elections and to ensure equitable access to voting for all eligible voters. The recent adoption of laws that limit access signals that many state legislatures are now prioritizing the former at the expense of the latter, often using unsubstantiated claims of massive election fraud to justify these restrictions.

The election integrity discourse revolves around concerns about ineligible persons casting ballots and the need to guard against fraud. Ostensibly to address these concerns, state legislatures are pursuing provisions that will limit voter access by scaling back absentee voting and same-day voter registration. These policies—some of which stem directly from a recent report by The Heritage Foundation—are demonstrably misguided given contemporary experience.

The Heritage Foundation contends that “errors and omissions by election officials and careless, shoddy election practices and procedures” have caused problems for voters and that reform is necessary “to ensure voters will have faith in our elections.”²

¹ Brennan Center for Justice: Voting Laws Roundup: March 2021. Available at: <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021>.

² Hans A. von Spakofsky. Feb. 2, 2021. “9 Election Reforms States Can Implement to Prevent Mistakes and Vote Fraud.” Available at: <https://www.heritage.org/election-integrity/commentary/9-election-reforms-states-can-implement-prevent-mistakes-and-vote>.

the voting rights of women, minorities, and groups that have suffered past discrimination in exercising the right to vote.⁷

As noted above, governments also have the obligation to ensure that the integrity of the process is not compromised, either by fraud or by malfeasance, and that committing fraud is both difficult and easily detectable. Advocates for many of the legislative reforms in states across the U.S. defend their initiatives as critical to ensuring that only eligible voters can register to vote and cast a ballot and that no one can tamper with a vote once it is cast.

However, legislation that ostensibly is aimed at reducing the opportunity to commit fraud can have a negative impact on voter access and participation, particularly for underrepresented voters. As a result, such measures sometimes fail to properly balance the burdens and benefits and may do little to instill public confidence in election processes.

The key question is whether proposed state legislative measures represent the least restrictive approach possible to secure the integrity of elections. The guiding principle should be to ensure that any measure that restricts voting rights is implemented on the basis of objective and reasonable criteria. This means that the measure should address an objectively valid concern and that it should avoid unnecessary reductions in access. Measures that appJETQ0 1 354(ob)-7(je)-2(c0912 (

verify the citizenship of registered voters with the records of the Department of Homeland Security, including access to the E-Verify system.

Carter Center Response: The Constitution guarantees only citizens the right to vote, and therefore measures to ensure that only citizens can vote are reasonable and appropriate. However, in practical terms, proving citizenship can be challenging for election officials and voters who lack easy access to key documents.

States vary in the documentation they require to prove citizenship. In some cases, a birth certificate is sufficient, but birth certificates are processed by local jurisdictions and can be difficult to replace.⁹

The c

Vote-by-mail procedures include multiple safeguards. In most cases, requests for mail-in ballots require verification of personal data that is included in the voter register. Hence, there is no credible election integrity argument against allowing no-excuse vote by mail.

Bottom Line: Absentee voting is a convenient voting method used by millions of Americans, and there is little evidence of absentee voter fraud. When voters have attempted to request an absentee ballot fraudulently, the security protocols have worked and individuals [have been caught](#) and charged.

Vote Trafficking, Harvesting, or Collecting

What Heritage Says: *Prevent vote trafficking. Vote third parties should be banned. That would ensure that candidates, campaign staffers, party activists, and political consultants are prohibited from picking up and potentially mishandling or changing absentee ballots and pressuring or coercing vulnerable voters in their homes. In other*

Carter Center Response: There is a broad consensus that “vote trafficking,” which refers to vote selling or buying, should be illegal and prosecuted when it occurs. However, the practice of “ballot collection” or “vote harvesting” is more contentious.

Election experts confirm that vulnerable voters who need assistance benefit from ballot collection. At the same time, there are legitimate concern0 612 792 reW*nBT/F1 12 Tf1 0 0 1 98.904 708.58 Tm

family members who collect ballots to register in advance, state legislatures can provide important safeguards without eliminating ballot collection altogether.

Election Observation

What Heritage Says: Allow election observers complete access to the election process. Political parties, candidates, and third-party organizations should all be allowed to have observers in every aspect of the election process because transparency is essential to a fair and secure system. The only limitation on such observers is that they cannot interfere with the voting and counting process.

However, a representative of the election office should be present to answer the questions of the observers. They should be legally allowed to be in a position exactly like election officials to observe everything going on, other than the actual voting by individuals. Election officials should be prohibited from stationing observers so far away that they cannot observe the process, including such procedures as the opening of absentee ballots and the verification process.

Carter Center Response: The principle of transparent access for election observers reflects a widely recognized international norm and best practice, and deserves widespread adoption in the U.S.¹³ Currently, although all states have policies that provide access for partisan observers, some states do not allow nonpartisan observers and accredited media. The Carter Center strongly encourages state legislatures to consider measures to facilitate increased nonpartisan observation.

The guiding principle for access is that both partisan and nonpartisan observers should have “meaningful access,” such that they can generally see and accurately understand what is transpiring. However, this does not mean observers should have the same access as election officials and voters, who are directly involved in the voting process. Observers should be allowed to be close enough to fully witness the process but should keep a respectful distance and should not be so close to voters that they might compromise voter privacy or intimidate the voter—or impede the work of election officials. In addition, observers should not abuse their position to frivolously challenge a voter’s eligibility or otherwise discourage voter participation.

Ultimately, election officials are responsible for balancing transparency and the efficient functioning of the voting process. Deference should be given to election officials’ discretion, unless this prevents effective observation.

Bottom Line: Election observation helps ensure transparent electoral processes. All states grant access to partisan observers, and all should extend access to nonpartisan, international, or

¹³ Declaration of Principles for International Election Observation, 2005.

academic observers. The role of observers is different from that of election officials, who administer the election process. Protecting voters' privacy and security is of utmost importance, so election officials should be able to impose reasonable limits on how close to the voting process observers can be.

Voting Assistance

What Heritage Says: Provide voting assistance. Any individuals providing assistance to a voter in a voting booth because the voter is illiterate, disabled, or otherwise requires assistance should be required to complete a form, to be filed with poll election officials, providing their name, address, contact information, and the reason they are providing assistance. They should also be required to provide a photo ID.

Carter Center Response: There is broad consensus that voting assistance should be available to any voter who needs it. It is reasonable to require those providing such assistance to complete a form with their name, address, contact information, and the reason they are providing assistance. They also should provide a photo ID. Limits should be placed on the number of people to whom an individual can provide assistance.

Bottom Line: Imposing some requirements on individuals providing voting assistance can serve as an additional security check and can increase accountability for those willing to offer these services.

Early Vote Counting

What Heritage Says: Prohibit early vote counting. To avoid premature release of election results, the counting of ballots, including absentee and early votes, should not begin until the polls close on Election Day. However, if a state insists on beginning the count before Election Day, it should ban the release of results until the evening of Election Day, subject to criminal penalties.

Carter Center Response: International best practice and election experts agree that election results should not be released until the polls close throughout a given jurisdiction. Indeed, most states already have extensive rules against reporting election results before all the polls close. The 2020 election demonstrated that election officials take this prohibition seriously.

While The Heritage Foundation is correct to underscore the importance of respecting this guideline, it goes too far in arguing against validating and counting ballots prior to Election Day. There is nothing wrong with such practices, so long as procedures are in place to ensure that the results will not be released publicly.

Same-