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Vote Harvesting: A Recipe for Intimidation, Coercion, and Election Fraud

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KEY TAKEAWAYS

Twenty-seven states have handed unscrupulous actors the ability to manipulate election outcomes through intimidation, coercion, outright theft, and forgery.

Ballot harvesting is a dangerous and foolish public policy that threatens the integrity of elections.

Vote harvesting should not be implemented by state legislatures—and should be prohibited in the states that currently allow it.

The 27 states (plus the District of Columbia)[1] that have legalized vote (or ballot) harvesting are handing party activists, campaign managers, consultants, and other political guns-for-hire with a vested political or monetary interest in winning an election the ability to manipulate the outcome through intimidation and coercion of voters, or the outright theft and forgery of their ballots. It is a dangerous and foolish public policy that threatens the integrity of elections. It should not be implemented by state legislatures—and should be prohibited in the states that currently allow it.

What Is Vote Harvesting?

Vote harvesting is the collection of absentee ballots from voters by a third party who then delivers them to election officials. The term "vote harvesting"

was essentially unknown to the general public until the North Carolina State Board of Elections overturned the results of the 2018 election for the Ninth Congressional District due to illegal vote harvesting, what the board called a "coordinated, unlawful and substantially resourced absentee ballot scheme."[2] It was also raised as a concern in California after the unexpected losses of Republican-held congressional seats, including in Orange County, a traditional Republican stronghold, where the registrar of voters said that individuals were "dropping off maybe 100 or 200 ballots" at a time.[3]

All states allow a voter to cast a ballot through an absentee ballot, often referred to as a mail-in ballot.[4] Those ballots are usually mailed back to election officials by the voter, although voters can personally deliver their ballots to local election officials in every state. Nine states allow a member of the voter's family to hand-deliver the absentee ballot; one state (Alabama) only allows the voter to return the ballot; and 13 states do not specify whether someone other than the voter can hand-deliver the ballot on the voter's behalf.[5]

Banning vote harvesting has been upheld as constitutional by the U.S. Court of Appeals for the Ninth Circuit.[6] Arizona is one of the states that prohibits anyone other than a voter, a caregiver, or a member of a voter's family or household to deliver an absentee ballot. In a lawsuit challenging that prohibition, the court rejected that challenge and held that the Arizona law was not pre-empted by federal laws regulating the U.S. Postal Service; did not violate the First Amendment rights of the vote harvester to engage in political speech; and is not an unconstitutionally vague criminal statute.[7]

But 27 states and the District of Columbia expressly allow vote harvesting by permitting someone other than the voter or a member of her family—which includes party activists, campaign managers, and consultants—to pick up a completed absentee ballot from the voter and deliver it to election officials. Twelve of these states "limit the number of ballots an agent or designee may return," but there is no information available on whether that limitation is actually enforced.[8]

Vote harvesting is such a common practice in some states, that harvesters (or ballot brokers) who are paid by campaigns to collect absentee ballots from voters "even have their own region-specific names. In Florida, they're known as 'boleteros.' In Texas, they're called 'politiqueras.'"[9]

The differing approaches to the return of absentee ballots can be seen in the contrast between North Carolina and California. In addition to the voter, North Carolina only allows "a voter's near relative or the voter's verifiable legal guardian" to return an absentee ballot.[10]

California had a similar law, but amended it in 2016, effective in the 2018 election.[11] Prior to the change, only the relatives of a voter or someone living

in the same household could return an absentee ballot.[12] But California eliminated that limitation and now allows a voter to "designate any person to return the ballot."[13]

A Recipe for Intimidation, Coercion, and Fraud

Allowing individuals other than the voter or his immediate family to handle absentee ballots is a recipe for mischief and wrongdoing in the election context. Neither voters nor election officials have the means of verifying that the secrecy of the ballot has not been compromised or that the ballot submitted in the voter's name by a third party actually contains votes for the voter's intended candidates and was not fraudulently changed by the vote harvester.

It also gives campaign and party intermediaries the opportunity to interact with voters while they are casting a ballot out of sight of, and without any supervision by, election officials. Thus, there is no one present to ensure that voters are not being coerced, intimidated, or paid for a vote. As a report about illegal vote harvesting in Texas says, "away from on-site monitors and electioneering restrictions at traditional polling places," the law that prohibits anyone from telling voters how to vote or marking their ballot without consent "is often honored in the breach."[14]

The Heritage Foundation's database[15] of proven instances of election fraud from around the country contains cases illustrating this coercion problem. That includes the case against the former mayor of Eatonville, Florida, Anthony Grant, who was convicted of voter fraud in 2017, including coercing absentee voters to cast ballots for him. It was the absentee ballots that won the election for him.[16] Another involved the former mayor of Martin, Kentucky, Ruth Robinson, who (along with her husband and son) was convicted of voter fraud in 2014 for, among other things, threatening and intimidating poor and disabled citizens into casting absentee ballots for Robinson, including ballots that the Robinsons had already filled out.[17]

Additionally, given the very sophisticated campaign data that are available on the voting history and campaign contributions of registered voters, it would not be difficult to send harvesters into neighborhoods in which voters are known to be highly likely to vote for an opposition candidate. The harvesters could pick up those absentee ballots and make sure they are discarded—and *not* delivered to election officials.[18]

Unless a voter checks with election officials after the election to verify that his or her ballot was received, the voter would never know what happened. It seems highly unlikely that the vast majority of absentee voters,

particularly the elderly, the infirm, or the disabled, would engage in such verification. Even if they do, they may not be able to identify which campaign operative picked up their ballot or what happened to it.

As the Clerk of Nueces County, Texas, Kara Sands, says, this type of absentee ballot fraud targets the vulnerable and often "involves older voters and the homebound." Those voters "don't even realize their votes are being stolen" she says. The vote harvesters "have these neighborhoods mapped out and they can go door to door.... [E]lderly people are being victimized and they don't even know it."[19]

All of these security vulnerabilities are why a 1998 report by the Florida Department of Law Enforcement that examined multiple cases of absentee ballot fraud in that state called absentee ballots the "tool of choice" for those who are willing to commit voter fraud to win elections.[20] Similarly, a Miami–Dade County Grand Jury issued a public report in 2012 recommending that the Florida legislature change its law to prohibit anyone from being "in possession of more than two absentee ballots at one time" unless the ballots are "those of the voter and members of the voter's immediate family."[21]

The Florida grand jury summarized all of the problems associated with vote harvesting and allowing an unsupervised third party (other than a member of the voter's immediate family) access to absentee ballots:

> [O]nce that ballot is out of the hands of the elector, we have no idea what happens to it. The possibilities are numerous and scary....
>
> If the ballot is complete and the return envelope is *signed and not sealed*, the boleteros/ballot brokers can remove the ballot from the secrecy envelope and see the private, confidential selections the elector made on the ballot. Similarly, if the ballot is not completely voted and the return envelope is signed and not sealed, the boletero/ballot broker can remove the ballot from the secrecy envelope...and then vote the rest of the ballot in lieu of the elector. If the boletero does not like the selections made by the elector, the boleteros can simply throw the ballot away and no one would ever know. All of these possibilities are present if an elector relinquishes, to a boletero, control of a fully or partially marked ballot contained in a signed but unsealed return mailing envelope.
>
> The more unsettling issue for us is each of the above illegal actions can also take place with a boletero picking up a fully or partially marked ballot contained in a *signed and sealed* return mailing envelope. The boletero can either stealthily or surgically open the envelope, view the choices of the voter and then decide whether the un-voted portions of a partially completed ballot will

be filled out by the boleteros or whether, depending on the elector's choices, the ballot will simply be discarded.[22]

Illegal Vote Harvesting in North Carolina

Even though vote harvesting is illegal in North Carolina, what happened in the 9th Congressional District race provides an object lesson in what can happen when campaign operatives have access to the absentee ballots of voters, just as predicted by the Miami–Dade grand jury.

In that race, Mark Harris (R) was running against Dan McCready (D). Despite the 900-vote lead that Harris had over McCready at the end of the election, the North Carolina State Board of Elections refused to certify the race because of accusations of fraud and vote harvesting by Leslie McCrae Dowless, who was working for the Harris campaign.

The election board actually overturned the results and ordered a new congressional election in that district (as well as in two local contests in Bladen County) after holding hearings that produced evidence of absentee ballot fraud.[23] Dowless and seven other individuals were indicted on charges of obstructing justice and unlawfully possessing absentee ballots for the purpose of "scheming to illegally collect, fill in, forge and submit mail-in ballots" from voters, as well as committing perjury by lying to the state election board in sworn testimony.[24]

The testimony before the board included Dowless' stepdaughter who admitted that she filled out blank or incomplete ballots for Republican candidates.[25] Additional evidence collected by the board indicated that Dowless and his co-conspirators submitted absentee ballot request forms on behalf of voters and then gathered unsealed and unwitnessed (and blank or incomplete) ballots directly from voters. Those ballots were then filled out in Dowless's office before being mailed in small batches at post offices geographically close to where the voter lived to avoid any warning signs that this was a vote harvesting operation.[26] Dowless collected several hundred ballots, paying his workers for their criminal activity: "$150.00 per 50 absentee ballot request forms and $125.00 per 50 absentee ballots collected."[27]

All of these actions, which resulted in forged, fraudulent, and improperly completed absentee ballots being submitted as votes, would have been even harder to detect had vote harvesting been legal in North Carolina, as it is in California. There might have been no basis on which to open an investigation, which ultimately uncovered all of the evidence about the mishandling, completing, and forging of absentee ballots. It should also be noted that the

state board had referred Dowless to prosecutors for alleged misdeeds in the 2016 election, but no action was taken then.[28]

Illegal Vote Harvesting in Texas

Texas law allows an absentee ballot to be personally delivered to election officials by the voter; someone "related to the voter within the second degree by affinity or the third degree by consanguinity"; someone registered to vote at the same address as, or physically living with, the voter; or someone "lawfully assisting a voter who was eligible for assistance." The "official carrier envelope" (containing the completed absentee ballot) cannot be "collected and stored at another location for subsequent delivery" to election officials.[29]

Texas has had a series of prosecutions and convictions for illegal vote harvesting.[30] One of those convicted harvesters, Zaida Bueno, described not only how she requested absentee ballots for voters, but made sure that the ballots were cast for the candidate who was paying her. She said that when the requested ballots arrived, she would go to those homes and would vote the ballots "for the one I want, the one I'm helping." She had engaged in this illegal election fraud for candidates in the "whole county and the whole courthouse—city council, school board, any election you name I've done."[31]

In 2016, a former city commissioner in Weslaco, Texas, Gaudalupe Rivera, was convicted of illegal "assistance" for filling out absentee ballots for voters in an election he won by only 16 votes. A new election was ordered, and Rivera lost.[32] Four vote harvesters, or politiqueras, as they are known in Texas, are currently being prosecuted in Tarrant County for fraudulently obtaining absentee ballots from older voters using intimidation, false pretenses, and forged signatures. They are accused of subsequently marking those ballots "without the voter's consent or knowledge."[33]

This scheme came to light only because of an "unlikely alliance" between a former Democratic state representative (who was defeated in a March 2014 primary by 111 votes), several Democratic consultants, and Direct Action Texas, a Tea Party-backed organization.[34] They went through the time-consuming task of reviewing applications for absentee ballots and discovered that "the applications were filled out in a machine-like fashion, each address and name of the requestor scrawled in identical handwriting on scores of ballots."[35]

And how do the vote harvesters find the absentee ballot voters they want to target? One example is demonstrated by the 2017 federal bribery conviction in McAllen, Texas, of a postal carrier. Noe Olvera was paid $1,000 by

a campaign worker for a list of the names and addresses of absentee ballot recipients on his postal route.[36]

These cases, as well as others in Texas, demonstrate the vulnerabilities of the absentee ballot process. This type of abuse of voters who are "elderly" and "infirm" is so pervasive, says Omar Escobar (D), district attorney of Starr County, Texas, that "the time has come to consider an alternative to mail-in voting." Escobar says it needs to be replaced with "something that can't be hijacked."[37] Much of that "fraud in Texas happens in down-ballot contests that can be decided by a couple dozen votes or less."[38]

Permanent Absentee Ballot Lists

Six states plus the District of Columbia allow voters to make a single request to be placed on a permanent absentee ballot list.[39] Election officials will then send those voters absentee ballots for *every* election without the voter having to make any further requests.

Election officials are notoriously slow in cleaning up voter registration lists and removing voters who have moved, died, or otherwise become ineligible to vote. A 2012 study on the inaccuracies of state voter registration lists found that "approximately 24 million—one of every eight—registrations in the United States are no longer valid or are significantly inaccurate."[40] That included more than 1.8 million deceased voters and 2.75 million registered in more than one state.[41]

Thus, it is highly likely that absentee ballots will continue to be sent to registered voters who are deceased or have moved before election officials receive notice that the voter should be removed from the registration list. This puts the ballots in the hands of other individuals who reside at those addresses—or to voter harvesters who are there to pick them up. It also provides vote harvesters with a list of voters to target. As the Miami–Dade County Grand Jury said, "maintaining such a list is an invitation to target those voters for fraud and undue influence."[42]

The grand jury recommended that the Florida legislature eliminate the permanent absentee ballot list and that "absentee voters who desire to vote by absentee ballot for a specific election request an absentee ballot for such election."[43]

Conclusion

Obviously, there needs to be a way for individuals to vote who cannot vote in person on election day due to illness or other valid reasons. Absentee

ballots are the easiest way to make that possible, but the rules and regulations governing them should not make them susceptible to theft, forgery, and coercion. The handling of absentee ballots should be restricted to voters and their most immediate family members or an individual residing in their household to prevent campaigns, political parties, and other third parties from handling absentee ballots.

While illegal vote harvesting still occurs even in states in which it is outlawed, banning it not only acts as deterrence, but gives authorities a basis for investigating potential wrongdoing that is otherwise difficult to detect—namely, when it is evident that third parties are collecting and delivering ballots to election officials.

Voters who are blind, disabled, or illiterate are entitled to assistance under both state and federal law when they need it, both in the polling place and when voting absentee.[44] But if that occurs in the absentee ballot setting, the voter and the assistor should both be required to sign a declaration form in which the voter certifies that he or she requested assistance and that provides the name and address of the assistor. This would help authorities when they are investigating claims of coercion, intimidation, and illegal assistance.

Voters should be required to request an absentee ballot each time they need one for a specific election. No state should allow a permanent absentee ballot voter list that automatically sends an absentee ballot to a registered voter for each election.

Illegal vote harvesting is not a party-specific practice. People on both sides of the political aisle will, on occasion, cheat to boost their preferred candidates or causes or to advance their own careers.

Election fraud of *any* sort, by *any* perpetrator, is an affront to America's republican values. Giving third parties who have a stake in the outcome of an election access to voters and their absentee ballots in an unsupervised setting is not wise and is a proven threat to the integrity of the election process.

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Endnotes

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4. *See* Hans A. von Spakovsky, *Elections Exclusively by Mail: A Terrible Idea Whose Time Should Never Come*, Heritage Found. Legal Memorandum No. 51 (April 21, 2010); https://www.heritage.org/election-integrity/report/elections-exclusively-mail-terrible-idea-whose-time-should-never-come.
5. *Returning Absentee Ballots*, *supra* note 1. Arizona, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, and Ohio allow a family member to return the ballot, with some other exceptions. The states that do not address this issue are Delaware, Hawaii, Idaho, Mississippi, New York, Oklahoma, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming.
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18. In the 2018 California election, a family's doorbell camera caught a voter harvester saying that she was there to collect absentee ballots as part of a "new service, but only to, like, people who are supporting the Democratic Party." Miranda Morales, *CA Dem Party Sinking to New Lows to 'Harvest' Absentee Ballots*, RedState (Oct. 16, 2018); https://www.redstate.com/mirandamorales/2018/10/16/ca-dem-party-sinking-new-lows-harvest-absentee-ballots/.
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38. *Id.*
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43. *Id.*
44. *See e.g.*, 52 U.S.C. § 10508.