



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 1, 2020

The Honorable Mitch McConnell  
Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
322 Hart Senate Office Building  
Washington, DC 20510

Re: Federal Intrusion into State Elections through the HEROES Act

Dear Leader McConnell and Minority Leader Schumer:

As State Attorneys General responsible for prosecuting and enforcing our states' election laws, we write to alert you to provisions in the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act)<sup>1</sup> that interfere in state elections and will foster rampant election fraud. Our concerns expressed in this letter focus on the Act's mail-in ballot mandates. These mandates will transform elections in a way that benefits vote harvesters and leads to massive disenfranchisement of qualified voters. We urge you to reject the Act because it would invade the prerogative of states to set their own election laws and would dramatically undermine election integrity.

Within the omnibus HEROES Act is the American Coronavirus/COVID-19 Election Safety and Security Act (ACCESS Act).<sup>2</sup> The ACCESS Act supplants state laws and rules governing elections. It requires states to provide mail-in ballots for all registered voters,<sup>3</sup> to allow individuals to apply for a ballot online, and to allow voters to register to vote as late as election day itself.<sup>4</sup> The Act also prohibits states from requiring identification, notarization, or witness signatures as conditions of providing an absentee ballot to a voter, and creates an elaborate process detailing the limited circumstances when a State may reject a mail-in ballot.<sup>5</sup>

The ACCESS Act also spells out when states must distribute mail-in ballots to all voters. If a public emergency is declared between 120 to 30 days before an election, the Act requires affected states to *automatically* mail absentee ballots to all registered voters.<sup>6</sup> In the case of states that do not register voters or keep central

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<sup>1</sup> Health and Economic Recovery Omnibus Emergency Solutions Act, H.R. 6800, 116th Cong. (as passed by the House, May 15, 2020), <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800ih.pdf>.

<sup>2</sup> HEROES Act, Div. P, § 160002, pp. 1452–1526.

<sup>3</sup> *Id.* at 1458–71.

<sup>4</sup> *Id.* at 1465, 1488, 1502.

<sup>5</sup> *Id.* at 1459, 1461–64.

<sup>6</sup> *Id.* at 1466–67.

voter files, the Act requires states to send out ballots to all eligible voters.<sup>7</sup> The Act also requires states to prepay the return postage for any voter registration application, mail-in ballot application, and mail-in ballot.<sup>8</sup>

The Act also changes state laws governing the submission deadlines for mail-in ballots. It prohibits states from refusing to accept a ballot postmarked on or before the date of the election and makes states ensure there are alternative methods of returning ballots.<sup>9</sup> This includes permitting voters to designate individuals other than themselves to return ballots. Provided they do not receive compensation based on the number of returned ballots, these individuals do not have a limit on the quantity of ballots they may return.<sup>10</sup>

Although the ACCESS Act makes the foregoing changes mandatory, it also earmarks \$3.6 billion to be distributed by the Election Assistance Commission,<sup>11</sup> and is in addition to the \$400 million already provided by the previously enacted CARES Act.<sup>12</sup>

The HEROES Act and the ACCESS Act run roughshod over state election laws designed to maintain election integrity and root out voter fraud. These state regulations exist to curb fraud and abuse.<sup>13</sup>

Since the outbreak of the COVID-19 pandemic, mail balloting systems in several states have come under legal assault by various partisan groups and individuals. The Texas Democratic Party, for example, is demanding that judges re-write Texas election law and allow *all* voters to *claim* a disability to vote by mail, regardless of their health or physical condition.

Congress should not interfere with state laws that protect election integrity, even during the COVID-19 pandemic. As states begin reopening, election officials have many options available to safely and securely hold elections. They can provide masks, hand sanitizer, and gloves. They can enforce physical distancing recommendations, sanitize voting stations, and implement other practical solutions so voting machines can be operated touch-free. To shorten waiting times and lines at polls, they could also expand the number of early voting days.<sup>14</sup> With precautions like these, states

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1479–82.

<sup>9</sup> *Id.* 1469.

<sup>10</sup> *Id.* at 1469–70.

<sup>11</sup> *Id.* at 1512–18.

<sup>12</sup> Coronavirus Aid, Relief, and Economic Stability Act, H.R. 748, 116th Cong. tit. V, at p. 250, <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

<sup>13</sup> See, e.g., *McGee v. Grissom*, 360 S.W.2d 893, 894 (Tex. App.—Fort Worth 1962, no writ) (per curiam).

<sup>14</sup> See, e.g., Proclamation by the Governor of the State of Texas (May 11, 2020), available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>.

can enable voters to access polling places safely and to exercise their vote without compromising election integrity.

The same cannot be said for mail-in ballots. Many states require voters to show an ID when they vote to prevent fraud. But there is no effective way for election officials to ensure that mail-in ballots are not requested fraudulently. Just as credit card skimmers can steal your financial information, vote harvesters can easily collect “authentic” signatures under false pretenses and steal your vote.

Once mail ballots go out, harvesters show up at a voter’s door and engage the voter to provide “voting assistance.” Sometimes a harvester will give a voter the impression that he is an election official and hand the voter an official ballot. Sometimes the offer of a free stamp does the trick. Whatever the case, successful vote harvesters leave with a voter’s signature, and a ballot that is either blank, “correctly” voted, or can be modified (or disposed of, if the voter chose the “wrong” candidate) later. Skilled vote harvesters often appear friendly and helpful. They may engage the voter in reassuring political discourse while assisting the voter in filling out the ballot. Done effectively, the process is largely invisible to voters, who are led to believe their ballot was cast according to their wishes.

Victims of mail ballot fraud commonly say that they were pressured and harassed by campaign workers to sign up to vote by mail, vote a certain way, or hand over their ballots. The common denominator in mail ballot fraud is that the voices and votes of the victims are cancelled and replaced by those of paid campaign workers. Every fraudulent vote disenfranchises a lawful voter by canceling out a lawful vote.

Rewriting states’ election laws through the HEROES and ACCESS Acts will allow absentee balloting that lacks the carefully considered state measures aimed at detecting, preventing, punishing, and ultimately eliminating voter fraud. We urge you to reject these bills and allow states to maintain the integrity of elections.

Very truly yours,



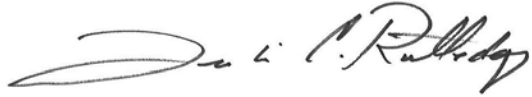
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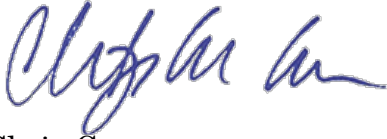
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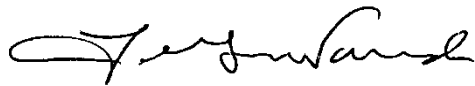
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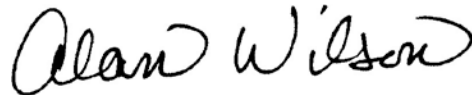
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