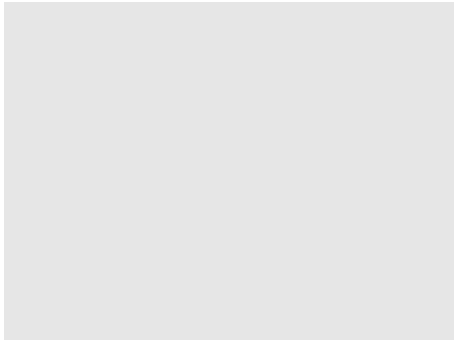


The threat to all-mail elections

By Arlene Rosenberg
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My move to the Bay Area from the Midwest introduced me to the joys of California living: stunning natural beauty, a near-ideal climate ... and all-mail elections.

While they may not appear on most lists of California attractions, our elections are a model for the nation. I relish the privilege of voting without taking off work, driving and parking, or waiting in line. And I love the reassuring text telling me that my ballot will be counted.

Unfortunately, the Trump administration sees things differently. In his July 16 nationwide address, President Trump called mail-in ballots “inherently corrupt” and pressed Congress to ban them.

But Trump isn’t waiting for Congress. Last March, he signed an executive order giving the federal government ultimate authority to decide who can vote by mail, wresting control away from states like California that prioritize voter participation. The U.S. Postal Service subsequently proposed a rule to put that order into operation.



Under the order and rule, USPS will assemble its own vote-by-mail eligibility list by requiring state election officials to enroll their mail-in voters on a USPS-controlled electronic platform. If a voter is not enrolled on this platform, USPS will neither accept a ballot addressed to them nor deliver a ballot cast by them.

This takeover of mail-in voting is unconstitutional, illegal and destined to deprive voters of their rights.

The Constitution gives states, not the federal government, authority to determine voter eligibility and set rules regarding the “Times, Places, and Manner” of federal elections. While Congress can make or alter state election laws, the president and agencies like USPS have no constitutional power over elections.

With limited exceptions, statutes prohibit USPS from performing non-postal services. Assembling a voter registry and policing a state’s adherence to it are clearly non-postal functions. In addition, USPS cannot legally refuse to accept or deliver ballots. USPS’ governing statute contains a comprehensive and exclusive list of “nonmailable” items. Needless to say, official ballots are not on this list. The statute also prohibits USPS from discriminating among mail customers. In other words, the postal service cannot choose whose mail it will deliver and whose it will not.

The immense burdens on state election officials to enter and update voter information on the USPS platform, and on USPS personnel to cross-check millions of mailed ballots against this platform, all within an extremely compressed timeframe, will inevitably lead to errors, delays and technical issues that will prevent qualified voters from receiving or casting ballots. Even more voters will lose their rights if a state fails or refuses to submit its data to USPS, requiring USPS to reject all ballot mail from that state.

Theoretically, someone who is prevented from casting a mail-in ballot could still vote in person, yet they may not realize that their vote-by-mail right has been denied until it is too late. In addition, in-person voting is not a viable option for disabled, elderly or remotely-located voters.

The administration claims these measures are necessary to prevent noncitizens from voting. But noncitizen voting is extremely rare. According to a rigorous analysis by the nonpartisan Center for Election Innovation and Research, allegations of noncitizen registration and voting fall drastically upon investigation

and the rare instances of it occurring prompt immediate action. Even the most inflated claims of noncitizen voting amount to a tiny fraction of a percent of all ballots cast. For example, New Jersey’s recently-discovered software glitch confirms rather than refutes these findings; the error was detected and corrected, and the number of noncitizens who actually voted was quite small relative to the total ballots cast. Nevertheless, the administration uses the minuscule risk of noncitizen voting to justify stripping eligible voters of their rights.

Mail-in ballots are not “inherently corrupt,” despite Trump’s claims. To the contrary, studies have found that voting by mail does not increase fraud, and that universal vote-by-mail systems like California’s are particularly secure.

Happily, our state is not taking the attack on our elections lying down. Along with 22 other states and the District of Columbia, California has successfully challenged the executive order in court, placing both the order and the proposed rule on hold.

The administration has appealed to the Supreme Court, however, so the struggle to defend our model elections is not over. But we Californians know that mail-in voting is not only secure, reliable and inclusive; it is also worth fighting for.

Arlene Rosenberg is a retired lawyer and a volunteer with Lawyers Defending American Democracy.



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