

Monday, May 8, 2023

Committee on House Administration  
1310 Longworth House Office Building  
Washington, DC 20515

RE: Post-Hearing Testimony: American Confidence in Elections Act - State Tools to Promote Voter Confidence

Chairman Steil, Ranking Member Morelle, and Members of the Committee:

Thank you for the opportunity to testify before the Committee on House Administration on Thursday, April 27, 2023, regarding election integrity and voter confidence.

As a West Point cadet more than four decades ago, I lived by the honor code that I “will not lie, cheat, steal, or tolerate those who do.” When I took office as West Virginia’s chief election officer, I took an oath to support the Constitution of the United States and the Constitution of West Virginia. It is therefore my most unfortunate but necessary duty to reemphasize my oral testimony addressing the sinister domestic elements that improperly influenced the outcome of the 2020 election, which must be addressed if we are to have a free and fair election in the upcoming 2024 cycle.

The 2020 election was not fairly and consistently administered across our nation. Ominous elements both inside and outside of the U.S. Government deprived Americans of a free and fair election. I will begin with the more nuanced “finger on the scale” type of improprieties, and move to the most blatant, insidious disinformation operation conducted on the American people in our election history. In that regard, yes, the 2020 election was stolen, and we cannot allow it to occur again.

Confidence in the processes through which Americans elect their representatives, and the outcomes of those elections, is directly related to voters’ experiences and belief that the elections were conducted fairly, transparently, and in accordance with the letter of the law. It is critically important that all government officials maintain the integrity of the election processes by not just following the laws prescribed by state legislatures, but also by not tolerating activities that seek to undermine those processes in favor of one candidate or political party.

Looking forward to the 2024 federal election cycle, we must learn from the inconsistent applications of assumed authorities that occurred in the 2020 election and affirmatively address the irregularities. This is not a call for denial or protest, but an objective truth that we cannot move forward if we do not learn from mistakes. The Election Clause directs the path forward, which is through the state legislatures. Those bodies, and they alone, are charged with the duty of filling statutory gaps and clarifying state election procedures.

Specifically, in states where local officials were directed to count ballots that did not satisfy the statutory requirements, those ballots were illegal. Examples include ballots

without signatures or with signatures that did not match the voter record, ballots dated outside the acceptable voting period or without a date at all, and ballots received after the receipt deadline—all of which, according to state law, should not have been counted. If it is the will of the legislatures to change those requirements or deadlines, those legislatures are the only authority to amend the policies.

In other states where ballot drop boxes were permitted by an executive branch official, contrary to the express language of their statutes, those unattended ballot receptacles were illegal. In some of these instances, the courts have ruled unambiguously that only state legislatures have the authority to prescribe that manner of voting.

The Supreme Court of the United States in *Texas v. Pennsylvania, et al.*, 141 S.Ct. 1230 (2020) tossed out one state's attempt to protect its voters' interests by challenging other states' actions in the 2020 election that fell under the doctrine of ultra vires, where those state officials exceeded the authorizations granted by their legislatures and, through executive—not legislative—action, ordered ballots to be counted that were cast outside the law. However, the Court refused to hear the challenge on the merits, finding that a state does not have a legal interest in how other states carried out their elections.

Regardless the Court holds a state does not have a legal interest to challenge another's ultra vires election activities, it is a simple but powerful truth that ballots cast without voter ID where required, voting locations that prohibit observers when authorized by law, ballots accepted after the deadline, and ballot envelopes not containing the requisite signatures or dates, must all be rejected to maintain both the voters' confidence and integrity in the election. However, that did not occur in the 2020 election.

Therefore, we must turn to our state legislatures to expressly prescribe what is, and is not, within those executive branch officials' authority to decide. To increase election confidence and protect the integrity of the 2024 election, legislatures should be called on to amend laws to reduce statutory gaps, tighten ambiguous text, and clean up provisions that can be taken advantage of and cause unintended consequences.

Changing or bending rules to favor one person or group over another is not a novel tactic. In sports, a player can shave points, intentionally lose, use prohibited drugs to gain an unfair advantage, bribe a referee, use ineligible players, alter the running of a clock, and recruit outside the rules, all of which help tip the scales on the outcome of games. Similarly in elections, changing or bending the rules can impact the outcome. Though one or two irregularities might be excused as mistakes or oversights, the collection of multiple improprieties in the same election cannot be overlooked.

The West Point honor code is an example of the moral compass that society expects all persons in power to follow. Per the code, we cannot tolerate those who lie, cheat, or steal. While the partisan left has held fast that there was no "widespread fraud," or at least not enough to change the outcome of an election, we must not tolerate the executive branch actions and tactics of going beyond the express authorities prescribed by states' legislatures.

First, no amount of fraud is acceptable, outcome determinant or not. The standard should not be whether the fraud might change an outcome, but rather whether the alleged fraud occurred and, if so, it must be addressed. Second, it is undisputed that several states changed election processes and deadlines during the 2020 election under assumptions of authority that were beyond those granted by their legislatures. While the common label of those activities has been “fraud,” it is not always so simple. Regardless, what is most important to realize is that such changes decreased voter confidence. It’s not just the reality of our election outcomes that is important, but equally so the voters’ perception of the propriety of the processes through which those outcomes were reached. Third, a number of states accepted funding from private sources without express authorization by their legislatures. Dressed in a “just here to help” fashion, the sources of that funding, once learned by the general public, caused significant national concerns. Whether the funding was offered uniformly to all jurisdictions is irrelevant: the fact that hundreds of millions of dollars of private investment was injected into the 2020 election on a scale that was a first in our nation’s history cannot simply remain unaddressed. Thankfully, some states’ legislatures took swift action and have clarified whether or how private funding may be accepted by election officials. However, that does not shed light on what occurred in 2020.

Combined, the activities described above lowered confidence in our elections. All ballots cast or counted in a manner that does not comply with the authority given to state officials by their state legislature thrusts those ballots into question. This should be unacceptable to everyone, not just members of one political party or another. Moving forward into 2024, to maintain voter confidence and integrity of the election, it is crystal clear that election processes in law must be followed verbatim, and any changes or departures therefrom must be debated and crafted by states’ legislatures before implementation.

I now turn to an equally important issue and perhaps the most insidious election interference operation in our nation’s history. Outdistancing run-of-the-mill fraud, election irregularities, and nefarious assumptions of authority was the direct attack on the people of the United States by veteran intelligence officials at the behest of a presidential candidate.

The recent release of records showing the Biden campaign’s efforts to generate a disinformation, psychological operation concerning a letter designed to directly impact the outcome of the 2020 presidential election and, without parsing words, effort to steal the election from President Trump.

The letter signed by 51 former intelligence agency agents regarding the Hunter Biden laptop was powerful. According to recently released communications, that was the point. Disinformation is a purposeful lie, and that is what the letter was—a lie to the American people to influence their vote in the presidential election. The letter was intentionally wrong, initiated within the Biden campaign, and then purposely delivered to an acquiescing press that failed to do its due diligence. Then, Big Tech helped cover it

up and squash distribution of the real, truthful story. Adding insult to injury, the FBI watched it all occur and was therefore complacent in the disinformation operation.

The situation was made worse when just days after the letter was made public, then-candidate Joe Biden cited the letter in a nationally televised debate to discredit his opponent, President Trump. Biden's campaign knew the letter to be a lie of their own making. The Biden campaign, in collusion with intelligence officers who cited their credentials with the CIA, DNI, NSA, NCC, and FBI, conducted that disinformation campaign against the American people for political purposes.

Now that their disinformation operation has been exposed, some of the 51 former intelligence agents are trying to cover themselves with assertions that they only said the laptop story had "the classic earmarks of a Russian information operation," and that their national security experience made them deeply suspicious. Make no mistake, their participation was knowing. They knew the press would run with their lie, regardless of the wording. Their letter stated the Russians were trying to influence how America voted, when in fact it was they who were improperly influencing Americans' opinions on how to vote. Their excuses now only make the matter worse.

Every one of our Federal Government agencies and personnel that took part in the election interference regarding the Hunter Biden laptop should be excoriated, the participants permanently prohibited from ever working inside government again, their security clearances revoked, criminal charges brought where appropriate, and any of those individuals currently serving in positions of public should be removed.

That is the way to begin to restore voter confidence in America.

As I said in my original testimony, I take no pleasure in casting aspersions on any U.S. government agency. I'm a graduate of the United States Military Academy at West Point. I spent 23 years in the United States Army serving my country in military hotspots throughout the world. I spent five additional years with the U.S. Department of State implementing the rule of law in Afghanistan. I am an American soldier who understands honor and service above self.

Now as Secretary of State and West Virginia's chief election officer, I have taken an oath to protect the constitutions of the United States and West Virginia and abide by the rule of law. I'm trusted by West Virginia voters to run free and fair elections. Therefore, it is my duty to speak out and declare that the evidence shows our own federal agencies were complicit in the disinformation campaign and certain state officials did during the 2020 election was not legitimate or fair. We cannot stand complacently and allow those actions to be repeated in 2024. Truly, our democratic republic is at stake.

Government is never authorized to act beyond the legal authority it is expressly granted. As we continue to learn of the actions in 2020 that eroded the confidence and integrity of the election, it is imperative that we identify and prevent the same actions from taking place in the upcoming 2024 election process.

We have come to expect China, Russia, North Korea, Iran and other foreign enemies to attack us and undermine our democratic republic. But it is far worse when our nation is undermined from within. To that end, our states, and our Congress, must take strong, immediate steps within the bounds of our U.S. Constitution to ensure it never happens again.

Mac Warner  
WV Secretary of State

