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Protecting the Right to Vote: The Assault on the Franchise Continues



By [Jerry H. Goldfeder](#) and Myrna Pérez

In their Election Law column, Jerry H. Goldfeder and Myrna Pérez discuss the ongoing battle to protect your right to vote.

The assault on the franchise continues in earnest. Just in the last several weeks, lawsuits have been brought against Pennsylvania, Nevada and New Jersey, challenging those states' attempts to expand mail voting in the face of the pandemic. In New Jersey, for example, the president's campaign is attempting to enjoin the governor's order that each registered voter receive a ballot without the need for an application process. (California is allowing the same ease of absentee voting.) In [Pennsylvania](#), the president's campaign tried to halt the use of voter drop boxes, an idea that will help diminish risks of Post Office instability. This issue is also being litigated in the state court.

In response to this conduct, a slew of nonpartisan organizations are involving themselves in these fights. Examples include the Lawyers Committee for Civil Rights Under Law, which has a hotline to assist voters with questions about voting procedures (<https://www.866ourvote.org/volunteer/>). Notably, the American Bar Association just announced that, along with the [National Association of Secretaries of State](#) and the [National Association of State Election Directors](#), it has launched "[Poll Worker Esq.](#)", a national

nonpartisan effort to recruit lawyers and law students to become poll workers (<https://www.nass.org/can-i-vote/become-a-poll-worker>); similarly, the Association of Pro Bono Counsel (<https://apbco.org/>) has partnered with the Brennan Center (<https://www.brennancenter.org/>) and the Lawyers Committee to produce [guides](#) for how people become poll workers.

Efforts to advise voters as to how to navigate procedural obstacles has been going on for several presidential cycles. The aggressive recruitment of poll workers by nongovernmental organizations is relatively new, however. The reason is simple. Under normal circumstances, there is increased turnout during presidential elections. Americans from across the country have experienced at times [long lines](#), less-than-optimal polling place conditions, and the frustration with overworked poll workers. During the pandemic, these inefficiencies are exacerbated by the fact that many elderly poll workers at risk are declining to fill their usual roles. As a result, there is a real need for additional poll workers for early voting and Election Day. And because of the huge numbers of mail-in voting that will surely occur, election administrators will need extra personnel for processing applications, mailing absentee ballots and canvassing these votes.

Voting rights advocates are, unfortunately, used to having to defend a free and fair electoral system. Ever since the U.S. Supreme Court gutted the preclearance provision of the Voting Rights Act in [Shelby v. Holder](#), various states have enacted restrictive voting laws. And jurisdictions are still purging voters from the rolls. Accurate voter list maintenance is obviously important, but the possibility that eligible voters are removed from the rolls needs to be minimized. Poll workers need to ensure that if a purged voter shows up to vote, they must be allowed to cast a “provisional ballot,” per federal requirements (it’s called an Affidavit Ballot in New York). Although this process is an important fail-safe, it does not always function as such for a variety of reasons.

Advocates should continue to demand greater access to early voting opportunities, more liberalized vote-by-mail procedures (including a cure procedure), and additional funding for election administrators to do their job. But the election is upon us. Minnesota, South Dakota and Wyoming start early voting on Sept.18; and North Carolina and several other states begin sending out absentee ballots within the next few weeks. In short, then, the efforts to educate voters as to their state’s procedures, and to assist election regulators to conduct the elections, is also upon us.

In a perfect world, our presidential election would be held as a nonpartisan, well-funded, efficient process. Until the United States reaches that point, if ever, lawyers can and should fill the gaps.

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