



April 10, 2024

The Honorable Merrick B. Garland
Attorney General the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

We, the Attorneys General of Indiana, West Virginia, Alaska, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, New Hampshire, South Carolina, Texas, and Utah, write to you today to address the concerning comments you made on Sunday, March 3, 2024, at the Tabernacle Baptist Church in Selma, Alabama regarding our country’s elections and election security laws passed by the states.¹ In your speech, you claimed that democracy is under attack by “discriminatory, burdensome, and unnecessary restrictions on access to the ballot.”² In response to these allegations, you announced that you “double[d] the number of lawyers in the civil rights division” and “launched the Justice Department’s Election Threats Task Force,”³ signaling your intent to intrude on our states’ authority. Your actions in the Department of Justice (“DOJ”) amount to a weaponization of the DOJ against the states, and your views about elections are not only a serious threat to the principles of federalism and separation of powers, but also to democracy and the rule of law.

The Constitution explicitly reserves to the states the primary role of establishing “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives.” Const. Art. I, § IV. “[T]he Framers of the constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.” See *Gregory v. Ashcroft*, 501 U.S. 452, 461-62, (1991) (citing *Oregon v. Mitchell*, 400 U.S. 112, 124-25 (1970)). The Framers left our election process in the hands of the people through their elected representatives at the state level, thereby making the regulation of elections a sovereign duty and right for the states.⁴ Further, the United States Supreme Court has held that “[a] State indisputably has a compelling interest in preserving the integrity of its election process.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per

¹ Attorney General Merrick B. Garland, *Attorney General Merrick B. Garland Deliver Remarks on Bloody Sunday at Tabernacle Baptist Church in Selma, Alabama*, Office of Public Affairs U.S. Department of Justice (Mar. 3, 2024), <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-deliver-remarks-bloody-sunday-tabernacle-baptist>.

² *Id.*

³ *Id.*

⁴ See THE FEDERALIST No. 59 (Alexander Hamilton).

curiam). Any subversion of these clear mandates would be undermining our Constitution and law and order. And we think your remarks undermine these principles in a few ways.

First, in your remarks, you stated that voter ID is an “unnecessary restriction[] on access to the ballot.”⁵ On the contrary, voter ID laws prevent voter fraud by stopping those who attempt to impersonate others at the polls. In 2005, Indiana led the charge to preserve election integrity by implementing the first-in-the-nation voter ID law, which requires in-person voters to present a valid government-issued photo ID to vote. Interest groups challenged the law in order to see Indiana’s elections devolve into unsecure contests with winners being chosen by anyone, not just those legally eligible to vote. However, the United States Supreme Court held that voter ID laws were constitutional and did not impose a burden on the electorate. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 200-02 (2008). The Court stated that the states have a “broad interest[] in protecting election integrity.” *Id.* With both the Supreme Court’s approval and 80% of Americans supporting Voter ID,⁶ 36 other states—including West Virginia—have followed Indiana’s example.⁷

Voter fraud and voter impersonation is very real. For instance, in 2014, “Rosa Maria Ortega, a non-citizen, was found guilty on two counts of voter fraud for voting in the November 2012 general election and the 2014 Republican primary runoff.”⁸ Frederick Gattuso was charged with one count of fraudulent voting in New Jersey because he voted twice during the November 2020 presidential election as different people with similar names.⁹ In 2022, Krista Michelle Connor plead guilty to one count of felony attempted illegal voting in Arizona after signing and casting an early mail in ballot in the name of her mother who passed away prior to the 2020 general election.¹⁰

With these repeated instances of voter fraud, the DOJ should be championing these laws and encouraging enforcement of them. Individuals are required to use an ID to prove identity when driving a car, boarding an airline, buying cigarettes, or purchasing alcohol, and none of these identification requirements are considered “discriminatory”¹¹ or “burdensome.”¹² Requiring an ID to vote in an election is no different.

⁵ Garland, *supra*.

⁶ Report, *Public Supports Both Early Voting and Requiring Photo ID to Vote*, Monmouth University (June 21, 2021), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062121/#:~:text=31.In%20general%2C%20do%20you%20support%20or%20oppose%20requiring%20voters%20to%20show%20a%20photo%20I.D.%20in%20order%20to%20vote%3F.

⁷ See Report, *Voter ID Laws*, National Conference of State Legislatures (Feb. 02, 2024), <https://www.ncsl.org/elections-and-campaigns/voter-id>; See also Voter identification laws by state, *BALLOTEDIA*, https://ballotpedia.org/Voter_identification_laws_by_state (last visited Mar. 26, 2024).

⁸ *Voter Fraud*, The Heritage Foundation, <https://www.heritage.org/election-integrity/heritage-explains/voter-fraud> (last visited Mar. 26, 2024).

⁹ *Frederick Gattuso—Election Fraud Cases*, The Heritage Foundation, <https://www.heritage.org/voterfraud/10173> (last visited Mar. 26, 2024).

¹⁰ *Krista Michelle Connor—Election Fraud Cases*, The Heritage Foundation, <https://www.heritage.org/voterfraud/10153> (last visited Mar. 26, 2024).

¹¹ Garland, *supra*.

¹² *Id.*

Second, you claim states have imposed “unnecessary restrictions” related to absentee voting, including “mail-in voting” and “the use of drop boxes.”¹³ Numerous security risks exist with mail-in voting and drop boxes, and these methods of voting have led to the proliferation of election fraud.¹⁴ For instance, surveillance videos of a Connecticut woman stuffing papers into an absentee ballot box in a mayoral primary has led to an investigation by election officials.¹⁵ If election fraud at drop boxes occurs for small, local mayoral primary races, then it’s likely the same type of fraud occurs during state-wide and federal elections at those same drop boxes. In another case, a woman was convicted for a voter fraud scheme in Iowa in November of 2023.¹⁶ She “submitted or caused others to submit dozens of voter registrations, absentee ballot request forms, and absentee ballots containing false information” as well as “signed voter forms without voters’ permission and told others that they could sign on behalf of relatives who were not present.”¹⁷ In still another case, a West Virginia mail carrier was convicted after he was found to have altered the party affiliation on several absentee ballot request forms.¹⁸ And that was certainly not the first time absentee ballots had been used to manipulated elections just in West Virginia; for instance, Democrat officials in Lincoln County, West Virginia were convicted of falsifying absentee ballots in a vast election scheme years before.¹⁹

These incidents demonstrate that election security laws passed by the states are necessary to curb election fraud, especially for absentee voting. States have the right to regulate mail-in and absentee voting. For instance, Indiana allows absentee voting by mail for individuals who fall into any of the thirteen categories enumerated by statute. *See* Ind. Code § 3-11-10-24. In 2020, individuals who wanted an “unlimited” right to vote by mail challenged the statute. The U.S. District Court for the Southern District of Indiana disagreed,²⁰ and the United States Court of Appeals for the Seventh Circuit affirmed that ruling. *See Tully v. Okeson*, 977 F.3d 608 (7th Cir.

¹³ *Id.*

¹⁴ *See* The Associated Press, *Jury find former Milwaukee election official guilty of obtaining fake absentee ballots*, NBC News, <https://www.nbcnews.com/politics/elections/former-milwaukee-election-official-found-guilty-obtaining-fake-absente-rcna144381> (last visited Mar. 26, 2024) [“A jury found a former Milwaukee election official accused of obtaining fake absentee ballots guilty Wednesday of misconduct in office and fraud”]; *See also* The Associated Press, *Wisconsin activist who ordered absentee ballots in others’ names charged with election fraud, ID theft*, NBC News, <https://www.nbcnews.com/politics/2022-election/wisconsin-activist-ordered-absentee-ballots-others-names-charged-elect-rcna46019> (last visited Mar. 26, 2024) [“Prosecutors charged a Wisconsin man Thursday with election fraud and identity theft after he acknowledged that he fraudulently requested absentee ballots”]; *See also* Gabriella Borter, *North Carolina Republican operative charged in election fraud scheme*, Reuters, <https://www.reuters.com/article/idUSKCN1QG2FR/> (last visited Mar. 26, 2024) [“Allegations that operatives working for Dowless illegally collected, and sometimes filled in, absentee ballots on behalf of Republican Mark Harris’ campaign emerged shortly after the Nov. 6 election”].

¹⁵ *See* Susan Haigh, “Surveillance video prompts Connecticut elections officials to investigate Bridgeport primary,” *Associated Press* (Sep. 20, 2023), <https://apnews.com/article/bridgeport-absentee-ballot-investigation-ganin-c69023a813ab10ab08dd9231e3299ad4>.

¹⁶ Press Release, *Woman Convicted for Voter Fraud Scheme*, Office of Public Affairs U.S. Department of Justice (Nov. 21, 2023), <https://www.justice.gov/opa/pr/woman-convicted-voter-fraud-scheme>.

¹⁷ *Id.*

¹⁸ WSAZ News Staff, *West Virginia Mail Carrier Sentenced for Attempted Election Fraud*, WSAZ, <https://www.wsaz.com/2021/06/21/mail-carrier-sentenced-attempted-election-fraud/> (last visited Apr. 1, 2024).

¹⁹ Press Release, *Two Former Lincoln County Officials Sentenced to Federal Prison on Election Fraud Charges*, U.S. Attorney’s Office for the Southern District of West Virginia (Aug. 29, 2012), https://www.justice.gov/archive/usao/wvs/press_releases/Aug2012/attachments/082912Bowman-Whitten-sentencings.html.

²⁰ *See Tully v. Okeson*, 481 F. Supp. 3d 816 (S.D. Ind.), *aff’d*, 977 F.3d 608 (7th Cir. 2020).

2020). The Seventh Circuit found that Indiana’s absentee voting statute and common-sense restrictions did not violate the Equal Protection Clause. *Id* at 616-17. The court further stressed that the fundamental right to vote does not extend to a claimed right to cast an absentee ballot by mail, but rather that the fundamental right to vote is protected. *Id* at 611; *see also McDonald v. Board of Election Commissioners of Chicago* 394 U.S. 802, 807 (1969). An individual has the right to vote, but they do not have the right to vote in their preferred manner of choice. *Id.* at 611, 613-14.

As shown, absentee voting can lead to fraud. In the 2005 bi-partisan commission report “Building Confidence in U.S. Elections,”²¹ former President Jimmy Carter and former Secretary of State James Baker noted that “[a]bsentee balloting is vulnerable to abuse” and could lead to voting “pressure, overt [or] subtle, or to [voter] intimidation.”²² The Commission recommended that states “reduce the risks of fraud and abuse in absentee voting by prohibiting ‘third-party’ organizations, candidates, and political party activists from handling absentee ballots” and that states should “make sure that absentee ballots received by election officials before Election Day are kept secure until they are opened and counted.”²³ No wonder, then, that so many States (including Indiana and West Virginia) have refused to adopt so-called “no-excuse” absentee voting.²⁴

Next, you also assert that the Voting Rights Act has been “drastically weakened” with an “increase in legislative measures that make it harder for millions of eligible voters to vote and to elect the representatives of their choice.”²⁵ This statement is factually incorrect. When the VRA was enacted in 1965, a limited number of jurisdictions required federal oversight over its state election laws to combat discrimination. The original intent of the VRA was to ensure that the rights of Americans were not infringed upon at the ballot box based on their race. The law rightfully targeted states and jurisdictions that used tests and other devices that “[restricted] the opportunity to register and vote,” but it was always intended to be temporary legislation.²⁶ Thankfully, the VRA did exactly what it was intended to accomplish: “voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers.” *Shelby County v. Holder*, 570 U.S. 529, 553 (2013).

The Voting Rights Act is not under attack. Election security measures passed by state governments do not “make voting more difficult,” nor are they dismantling the right to vote.²⁷ Instead, common sense election laws strengthen our electoral process to ensure free and fair elections are conducted among the states; especially since voter fraud does exist. The Heritage

²¹ See Report, *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* (September 2005), <https://securevote.news/wp-content/uploads/2023/02/Carter-Baker-Report.pdf>.

²² *Id.*

²³ *Id.*

²⁴ Table 2: *Excuses to Vote Absentee*, National Conference of State Legislatures (Jan. 3, 2024), <https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee>.

²⁵ Garland, *supra*.

²⁶ *About Section 5 of the Voting Rights Act*, The United States Department of Justice (Updated November 17, 2023), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

²⁷ Garland, *supra*.

Foundation alone documented over 1,500 proven instances of voter fraud.²⁸ It is critical that we continue to ensure that our elections are safe and secure for those who possess the legal right to vote.

In reality, the right to vote is under fire in our country by certain radical elected officials. Numerous states and localities have passed laws allowing aliens to vote in certain elections, including New York City,²⁹ San Francisco,³⁰ and Washington D.C.³¹ In some cases, courts found these laws unconstitutional,³² and rightly so. For example, a court found that a New York City ordinance which allowed noncitizens to vote in certain municipal elections violated the New York State Constitution. *See Fossella v. Adams*, No. 2022-05794, 2024 WL 696933, 8-12 (N.Y. App. Div. Feb. 21, 2024). Radical politicians would rather dilute the vote of those who can legally vote in favor of those who cannot. Even so, the United States banned noncitizens from voting in federal elections in 1996.³³

As our states' Chief Legal Officers, it is our sovereign duty to defend the rule of law, as well as the safety and security of our elections—especially due to the Biden Administration's utter failure in protecting our borders by allowing 7.2 million illegal immigrants to enter the United States since taking office.³⁴ It is also our principal duty as state attorneys general to protect against intrusions by the federal government into the sovereign rights of states and the collective people.

Finally, as you mention, the Department of Justice is “fighting back” against these commonsense election security measures passed by the states in numerous ways.³⁵ You touted “doubl[ing] the number of lawyers in the Voting Section of the Civil Rights Division” and “launched the Department’s Election Threats Task Force.”³⁶ The DOJ’s expansion serves as a direct attack on the states’ role in regulating elections. Instead of working with the states to secure elections, you suggest weaponizing the DOJ through the civil rights division to undermine anything that you subjectively believe is a “threat [to] democracy.”³⁷ Instead of guaranteeing that each legal and eligible vote counts, your goal seems to be to expand the Democrat party votes. And by using the justice system in this way, you diminish any democratic principles you claim to defend.

²⁸ See *A Sampling of Recent Election Fraud Cases from Across the United States*, The Heritage Foundation, <https://www.heritage.org/voterfraud> (last visited Mar. 26, 2024); See also Honest Elections Project, <https://honestelections.org/> (last visited Mar. 26, 2024).

²⁹ See Grace Ashford, *Noncitizens’ Right to Vote Becomes Law in New York City*, The New York Times (Jan. 9, 2022), <https://www.nytimes.com/2022/01/09/nyregion/noncitizens-nyc-voting-rights.html>.

³⁰ See *Non-citizen voting rights in local School Board elections*, City and County of San Francisco (March 20, 2024), <https://www.sf.gov/non-citizen-voting-rights-local-school-board-elections>.

³¹ See D.C. Law 24-242. Local Resident Voting Rights Amendment Act of 2022, <https://code.dccouncil.gov/us/dc/council/laws/24-242> (last visited Mar. 26, 2024).

³² See Jonathan Allen, *New York Judge Rules Law Allowing Noncitizens to Vote for Mayor is Unconstitutional*, Reuters (June 27, 2022), <https://www.reuters.com/world/us/new-york-judge-rules-law-allowing-non-citizens-vote-is-unconstitutional-2022-06-27/>.

³³ See 18 U.S.C. § 611.

³⁴ See Chris Pandolfo, *7.2M Illegals Entered the US Under Biden Admin, an Amount Greater Than Population of 36 States*, Fox News (Feb. 20, 2024), <https://www.foxnews.com/politics/illegal-immigrants-biden-admin-amount-greater-population-36-states>.

³⁵ Garland, *supra*.

³⁶ *Id.*

³⁷ *Id.*

Across the country, the 2020 general election generated mass confusion and distrust in the system. Public confidence in our election system is at record low.³⁸ By using the DOJ against the states, you continue to sow the seeds of distrust among the American electorate. The DOJ has no authority to dictate to the states in matters that concern their sovereign right to ensure safe, secure, and free elections. Although we do not know exactly the strategy the DOJ intends to take with its numerous election attorneys, we intend to vigorously defend our election laws. We will not allow intimidation and fearmongering to supersede the will of the people.

Sincerely,



Todd Rokita
Indiana Attorney General



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Treg Taylor
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³⁸ *Infra* Monmouth Poll, Question “No. 23 - Do you believe Joe Biden won the 2020 election fair and square, or do you believe that he only won it due to voter fraud? Fair and square 61%; Due to voter fraud 32%.”
https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062121/#:~:text=23.Do%20you%20believe%20Joe%20Biden%20won%20the%202020%20election%20fair%20and%20square%2C%20or%20do%20you%20believe%20that%20he%20only%20won%20it%20due%20to%20voter%20fraud%3F.

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