

The Conservative Voter Fraud Swarm

Interlocking sets of legal organizations comprise what amounts to a marketing campaign for the false narrative of stolen elections.

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Election years always play host to active litigation around the laws and procedures of voting. But the unique conditions of the 2020 election have made voting rights lawsuits more urgent and more aggressive. Lawyers have fanned out across the country to address what can be changed by the courts to make November's election as fair as possible.

In reliably Republican Texas and deep-blue New York, groups have sued over whether all voters can access an absentee ballot without needing an excuse. In South Carolina and Virginia, suits have been filed over the requirement that someone else must witness and sign your mail-in ballot, a hardship during this time of social distancing and home quarantine. In Wisconsin and North Carolina, lawsuits challenge the legality of voter ID laws. In all these cases, conservative groups are attempting to keep restrictive laws in place.

The Republican National Committee has dedicated about \$20 million to its legal strategy, and the Trump campaign is also spending large sums on voting rights suits. But they have been bolstered by the emergence of charities and legal groups built specifically to throw money at suppressing the vote. This includes groups with all sorts of connections to the conservative movement, like the Honest Elections Project, a legal alias for the Judicial Watch Project, which advocated for the nomination of Supreme Court Justice Brett Kavanaugh, and which is connected to the Federalist Society and the Koch brothers network.

Several more-established conservative legal groups mask themselves with the branding of well-known pro-voting rights organizations. There's the American Constitutional Rights Union (ACRU; formerly the American Civil Rights Union), which could easily be confused with the American Civil Liberties Union (ACLU). There's also the Public Interest Legal Foundation (PILF), not to be mistaken for the Public Interest Law Fund. And there's the Lawyers Democracy Fund, which often refers to itself in emails as LDF, the same nickname for the NAACP's Legal Defense Fund.

"This is consistent with a naming trend where we see conservative anti-voter groups trying to co-opt the names of existing pro-voting groups," said Eliza Sweren-Becker, counsel at the Brennan Center for Justice, in an interview with the *Prospect*. "There is a concerted effort among these organizations ... And they are bringing the same types of claims across the country."

While these groups do not technically work together, they share similar views about mass voter fraud in their rhetoric and legal arguments, inside and outside of the courtroom. For instance, in December 2019, PILF filed a lawsuit pushing for the City of Detroit to "properly clean its voter

rolls,” which could be interpreted as purging people’s names from the official registered-voters list. It claimed, based on census data, that about 2,500 people were dead, almost 5,000 names were doubled or tripled, and about 16,500 should be removed because the date of registration was missing.

Security measures like specific bar codes give election officials numerous warning signs that a ballot may be fraudulent.

PILF voluntarily dismissed the case on June 30. But that didn’t stop the Honest Elections Project from supporting a suit filed on June 9 against the Michigan secretary of state based on the same premise, with a press release using the same language, asking Michigan to “clean up” the voter rolls. The plaintiff in this case is Tony Daunt, whose legal team includes William S. Consovoy, the personal attorney to President Donald Trump, along with two other lawyers from his practice, as well as Jason Torchinsky, who is a contributor to the Federalist Society and a member of the Republican National Lawyers Association.

It’s also not unusual for these organizations to rescind their claims when a win on the merits appears unlikely. Often the evidence isn’t clear when it’s presented in court, according to several experts. In one Wisconsin case from 2014, the judge wrote in his decision that “[s]ome of the ‘evidence’ of voter-impersonation fraud is downright goofy, if not paranoid.” In this case over voter IDs, *Frank v. Walker*, the defense argued that voter ID laws would stop buses from transporting foreigners to vote in U.S. elections, though there was no proof provided. More to the point, there is little to no evidence that there are people trying to vote under a false identity, the kind of fraud that would be prevented with an ID law.

“Whether it’s PILF, or the Honest Elections Project, or the ACRU, there’s a pattern that is repeated across these jurisdictions to try to bully or compel these underfunded, under-resourced local officials into purging their rolls when that is not necessary and it’s certainly not what’s required by the National Voter Registration Act,” Sweren-Becker explains.

The Honest Elections Project did not respond to the *Prospect’s* request for comment.

It won’t be possible to know who is funding these efforts until November 2021, when their respective 990 forms can be made available upon request. Even then, most of these organizations will not have to disclose their donors, or their identities will be masked under different LLCs. But personnel files can be an effective way to show the track records of these groups and map out connections between them.

The president and general counsel of PILF, J. Christian Adams, is a longtime right-wing activist and former civil rights attorney in George W. Bush’s Justice Department, who used his office mostly to allege and try cases of discrimination against white people, most notoriously the phony “New Black Panther” voter intimidation case, which became a rallying cry on the right. Donald Trump appointed Adams to the United States Commission on Civil Rights this August. Adams was also formerly a board member at the ACRU.

Speaking of the ACRU, most of the board is an older-aged group of former members of Ronald Reagan’s administration, but also among their top ranks are a former executive director of the American Legislative Exchange Council (ALEC), a former legal fellow at the Heritage Foundation, a board member at the Cato Institute, and Hans von Spakovsky, a notorious voter

fraud promoter (and Adams's former boss in the Bush Justice Department) whom President Trump appointed to his Commission on Election Integrity (along with Adams) in 2017.

ALEC, the Cato Institute, and the Heritage Foundation all receive money tied to the Koch network and their various charities.

Harvey Tettlebaum heads the Lawyers Democracy Fund, but he also serves as outside general counsel for the Missouri Republican Party, and before that he was a state delegate to the Republican National Convention. And the Honest Elections Project is run by Leonard Leo, co-chairman of the Federalist Society, who is also credited with having unique influence on how President Trump has reshaped the courts.

Victories from these organizations often come not from judges, but from promoting voter fraud concerns and creating a credible distraction for election officials. "The damage is almost done in the moment that they file these cases," says Kristen Clarke, president and executive director of the Lawyers' Committee for Civil Rights Under Law.

The cases are part of a larger messaging campaign, functioning as evidence in news stories or posts on social networks, which are not obligated to connect an initial filing to a case's ultimate decision (or dismissal). Additionally, the legal teams at these conservative organizations can work in tandem with ad campaigns. In addition to its legal work, the Honest Elections Project has spent hundreds of thousands of dollars this year on ads with the slogan "Easy to Vote, Hard to Cheat."

This all happens despite the lack of evidence of voter fraud in the United States. A Brennan Center report looking at voter fraud in the 2000s revealed that voter impersonation, both for in-person voting and mail-in ballots, occurred between 0.0003 percent and 0.0025 percent of the time. As the report states, "It is more likely that an individual will be struck by lightning than that he will impersonate another voter at the polls."

President Trump has recently used Twitter and his daily press conferences to advocate that mail-in voting is uniquely susceptible to fraud, despite the fact that he also votes by mail in Florida. Another study from the Brookings Institution specifically evaluated the Heritage Foundation's voter fraud map and database for mail-in ballots, finding that: "There is surprisingly little voter fraud and not nearly enough to justify blocking vote-by-mail systems in a pandemic."

Sylvia Albert, director of voting and elections at Common Cause, describes the voter fraud marketing effort as pure fearmongering. "It's like when you say what could happen, and if it sounds like it could happen then people think, 'Well, it probably is happening.' But what people don't understand is all of the security provisions that are in place to make sure it doesn't happen."

Such security measures include things like bar codes on mail-in ballots that are specific to every individual voter. Ballots are not just meticulously designed (albeit not always for an ideal user experience) but are also printed on custom paper, mailed with custom-sized envelopes, and given certain types of postage. These features give election officials numerous potential warning signs that a ballot may be fraudulent, Albert explains.

This conservative assault, whether successful or not, exacts a cost on democracy, Sweren-Becker says. "Just by calling into question the integrity of mail voting and just by sending notice letters

and threatening lawsuits against local election administrators, these groups are siphoning off resources from these local election administrators that should be devoted to undertaking and administering elections this year, which are occurring in unprecedented conditions and come with new price tags for new supplies that are needed to conduct an election during a pandemic.”

Voting rights groups opposing this conservative swarm of litigators have made progress on removing barriers to voting in November, similar to the actions taken for primary elections this summer. However, the litigation won't be over on Election Day. It is inevitable that a new wave of suits will be filed over the fairness of how these laws were implemented: whether absentee ballots arrived on time, how they are verified, whether voters have an opportunity to fix mail-in ballot errors.

One implementation lawsuit like this already occurred in New York's primary this summer, when a mix-up over postmark rules and absentee ballots not being sent out on time caused confusion and left two races undecided until more than a month after voting. The procedural issues were partially caused by the limited resources of the Board of Elections, and its inability to execute a primarily vote-by-mail election—a transition that many states are also navigating ahead of the general election.

“I was in college during the 2000 election, I remember 34 days,” Albert says, referring to the vote-counting showdown in Florida that culminated in the Supreme Court's vote in *Bush v. Gore*. “I expect that in multiple states. I would not be surprised if there are ten states where they are doing very careful recounting of ballots and there are lawsuits around which signatures were appropriate and whether there's postage. So those are the things to come.”