



Barr Authorizes Election Fraud Investigations. Why Not?

Plus: Obamacare and qualified immunity before SCOTUS, Uber can acquire Postmates, and more...

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Attorney General Bill Barr instructed U.S. prosecutors to look into any credible claims of election irregularities in their districts. A Monday letter from Barr is spawning a lot of worries that the Department of Justice (DOJ) backs President Donald Trump's spurious allegations of voter fraud or is at least attempting to lend credence to them. And yesterday's protest resignation of Richard Pilger, head of the DOJ branch that oversees election crimes, only added to that effect.

But Barr's letter doesn't give the impression that he's trying to help Trump hijack the election. Rather, he seems to be trying to walk a very fine line and perhaps even stamp out his boss's conspiracy claims.

There's no simply *ignoring* them at this point; not just Trump but other prominent Republicans have backed these claims of fraud, despite the total lack of evidence and the sheer scale that would've had to take place for it to have affected the election outcome. (Three states would have to be wrong, by a lot; this isn't a difference of a few hundred votes in one small area of one state, as with Florida in 2000.) Some listeners may never be convinced otherwise—but if *anyone* is to be, an inquiry blessed by Trump's top cop finding no evidence for Trump's claims is probably about the best there is to offer.

Provided these fraud claims are as bunk as they seem, then this is the best way to put them to rest.

Note that Barr isn't ordering a needle-in-a-haystack search, nor does his letter suggest that the DOJ expects to find anything. Addressed to U.S. attorneys, the assistant attorneys general of DOJ's criminal, civil rights, and national security division, and the director of the FBI, the letter authorizes inquiries into "substantial allegations of voting and vote tabulation irregularities prior to the certification of elections in your jurisdiction in certain cases."

That *substantial* there seems to be giving people the creeps, with its potential to imply endorsement of the allegations. But substantial does not mean substantiated, and there *have* been

a substantial number of allegations from the president and his allies, claiming a substantial interference effort in the U.S. election that would have substantial implications. It's a weaselly word, perhaps, but not exactly wrong.

Combined with the rest of Barr's letter, I see no reason to read too much into it. His next sentence tells U.S. prosecutors to conduct inquiries "if"—*if*—"there are clear and apparently-credible allegations of irregularities that, if true, could potentially impact the outcome of a federal election in an individual State."

"While it is imperative that credible allegations be addressed in a timely and effective manner," Barr continues, "it is equally imperative that Department personnel exercise appropriate caution and maintain the Department's absolute commitment to fairness, neutrality and non-partisanship."

A bit down the page Barr stresses again that "while serious allegations should be handled with great care, specious, speculative, fanciful or far-fetched claims should not be a basis for initiating federal inquiries."

And "nothing here should be taken as any indication that the Department has concluded that voting irregularities have impacted the outcome of any election," Barr writes. He says he is offering this "authority and guidance to emphasize the need to timely and appropriately address allegations of voting irregularities so that all of the American people ... can have full confidence in the results of our elections."

Isn't that what we want? Trump's claims can't be unheard by the many people who have heard them. Many people seem to believe them. No amount of media reporting otherwise—even by Fox News—is going to change their minds. Some amount of official attention to this is going to have to happen, and Barr's response seems measured and proportionate.

Even Trump's people are dissatisfied...

"This is not what some of us wanted. This is not what I wanted," a senior Trump campaign official told *The Daily Beast*. "This will give the president [and others] something to play with for a while, but until Bill Barr actually puts up or shuts up, we're still where we [have been]."

FREE MINDS

The Supreme Court is considering *Brownback v. King*, a case involving qualified immunity for police officers. Here's how it started:

Twenty-one-year-old college student James King was walking between his summer jobs one afternoon. On his walk, he was approached by two plain-clothes officers, Douglas Brownback and Todd Allen, who were assigned to an FBI fugitive task force in Grand Rapids, Michigan. Brownback and Allen were on the lookout for a home invasion suspect. They did not have a clear or recent picture of the suspect, but they knew he was a 26-year-old white male, between 5-foot-10-inches and 6-foot-3-inches tall, who wore glasses, and apparently bought soda from the same gas station around the same time every day. Unfortunately for King, he fit the general description and was walking near the gas station, so Brownback and Allen decided to stop him.

While King at first acquiesced to the stop after spying badges hanging around the officers' necks, when the officers took his wallet from his pocket, King asked if he was being mugged and tried to run away. The officers tackled him to the ground, and when King put up a struggle, they choked him and punched him repeatedly in the head, causing one onlooker to tell the 911 operator that the officers were "gonna kill this man." As it turns out, King wasn't the suspect. And when the state of Michigan nevertheless prosecuted King for resisting arrest, a jury acquitted him of all charges.

Read more about the case at [SCOTUSBlog](#), or check out the [Cato Institute's amicus brief](#).

"While the issues raised by *Brownback v. King* may seem abstruse, the implications for King are clear: If the Court decides the 6th Circuit got it wrong, he will not be allowed even to try holding Allen and Brownback accountable for appalling conduct—conduct that the appeals court said a jury could reasonably decide violated his Fourth Amendment rights," [explains Reason's](#) Jacob Sullum. "According to the government, that is the outcome demanded by a law Congress passed to help victims of government abuse."

FREE MARKETS

SCOTUS today will hear oral arguments in *California v. Texas*, a case challenging the Affordable Care Act (ACA). The case turns on three questions, including a question of whether plaintiffs even have standing to challenge [the ACA's individual mandate](#)—which penalized people for not having health insurance—now that there's no financial penalty for refusing to comply. From [Jonathan Adler at *The Volokh Conspiracy*](#):

A threshold issue in *California v. Texas*, the Affordable Care Act case to be argued on Tuesday, is whether any of the plaintiffs have standing to challenge the so-called "individual mandate." This is a serious question because in 2017 Congress eliminated the financial penalty that had been used to enforce the mandate. As originally enacted in 2010, the ACA instructed Americans to obtain qualifying health insurance, and threatened to impose a tax penalty on those who failed to comply. Now, however, the instruction remains in the U.S. Code, but the financial penalty for noncompliance is gone.

Ordinarily, plaintiffs who seek to challenge a governmental action must allege that they will suffer a cognizable injury from the government imposition. So, for instance, an oil refinery challenging an environmental regulation would allege that they must spend money installing mandated pollution control equipment or face enforcement actions, backed by fines and other penalties. This injury requirement is rooted in Article III of the Constitution. As such, the Supreme Court has held, if a plaintiff cannot allege a sufficient injury, federal courts have no power to hear their case.

The lack of a penalty to enforce the individual mandate would seem to defeat any claim of standing on behalf of the plaintiffs. Yet the lower courts (and the [Department of Justice](#)) have acquiesced to their standing claims.

More on the case [here](#) and [here](#).

QUICK HITS

- In the latest *Reason Roundtable* podcast, Nick Gillespie, Katherine Mangu-Ward, Peter Suderman, and Matt Welch discuss whether the election outcome was good for libertarians.
- "The Trump White House on Monday instructed senior government leaders to block cooperation with President-elect Joe Biden's transition team, escalating a standoff that threatens to impede the transfer of power and prompting the Biden team to consider legal action," *The Washington Post* reports.
- The Justice Department will let Uber acquire Postmates.