



Set Up the Steal

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Georgia enacts, and other red states consider, new election laws that facilitate a Trump-like attempt to overturn results

Republicans have identified two problems with the 2020 election, problems they're trying to address by changing state laws:

Donald Trump lost, in part due to a lot of people voting against him in swing state urban centers such as Atlanta, Philadelphia, and Detroit.

Donald Trump's post-election efforts to stay in power failed.

This is where I'm supposed to mince words, and note Republican voters' concerns about "election integrity" and "voter fraud." Except those concerns are based on lies. No one has found any evidence to back up allegations of mass fraud (and not for lack of trying). The Trump campaign lost over 60 cases in court. Trump administration officials, including Attorney General William Barr and head of cybersecurity Chris Krebs, say the election was secure and legitimate. Facing defamation lawsuits, Trump lawyer Sidney Powell admitted her accusations were nonsense, and Fox News ran a segment debunking claims of fraud that had aired on Fox.

The solution to average Republicans' concerns about election integrity is simple: conservative politicians and media figures should tell them the truth. And not just once in a ploy to avoid legal liability, but as often and as forcefully as they've been lying.

No one has to give credence to Trump's Big Lie. It already caused the January 6 attack on the Capitol that led to the deaths of three police officers and the first non-peaceful transfer of power in modern U.S. history. Basing new election laws on Trumpian fiction rather than reality is a disservice.

This doesn't mean every provision in red state election bills is bad, nor that every criticism is accurate. As Walter Olson argues in *The Dispatch*, states enacted new measures to facilitate voting in the pandemic, and need new laws to make them permanent. Georgia codified some early voting and other measures that leave the state with better voter access than it had in 2018, and better than some states, including some run by Democrats, have today. "Jim Crow on steroids" this is not.

But critics aren't wrong to make the comparison. Discouraging black Georgians from voting was an apparent goal at the start. One measure prohibited early voting on Sundays, a not-so-subtle attack on black churches' "souls to the polls" events.

That got dropped from the final version, but the bill they passed still creates universal rules that disproportionately burden black voters. For example, the law limits drop boxes to 1 per 100,000 active voters. That's a non-issue in less densely populated areas, and a burden for denser (and blacker) locations. In 2020, the four Atlanta-area counties had 94 drop boxes. Under the new law, those counties can have a maximum of 23.

Absentee ballot drop boxes were new in 2020, so Georgia has pulled off elections without them. But why limit it in Atlanta? Why not allow denser counties to set up as many as necessary, except to make voting less convenient there?

The law also requires moving drop boxes inside, limiting access to business hours, which is inconvenient for people who lack free time during the day. It stops the state from sending unsolicited absentee ballots to voters under 65, cuts the window in half for requesting absentee ballots, sends them out three weeks later, and adds new ID requirements. Not coincidentally, lying about absentee ballots, which showed no significant problems in Georgia or elsewhere, was a key part of Trump's plan to steal the election.

However, despite Republicans' intentions, it's not clear that restricting mail-in voting will give anyone an advantage. While more Democrats voted absentee in 2020—due in part to greater concern about COVID—usage may revert to pre-pandemic numbers, and anger over disproportionate burdens may motivate turnout, especially among black Democrats.

On principle, I oppose making it harder for American citizens to vote, especially when the burdens fall disproportionately, no matter which party it's likely to help. But while Georgia did ratchet back some 2020 voting access expansions, it also enacted rules that improve on 2018. Every county is now required to have at least one drop box, and if large polling places experience waits of more than an hour, they're required to hire more people or split up precincts in time for the subsequent election. Jim Crow restrictions didn't have correctives like that.

The most concerning parts of Georgia's law do not involve what happens before and on Election Day, but what happens after.

Set Up the Steal

Trump's effort to overturn 2020 focused on post-election tasks that were previously treated as formalities, such as states and counties certifying vote counts. For example, he invited Republican leaders of Michigan's state legislature to Washington as they floated ideas to overrule their voters, and called a member of Wayne County's Board of Canvassers who subsequently tried to rescind her decision to certify the vote count (Wayne County, which includes Detroit, is the most populous in the state, with a relatively high percentage of black residents).

Trump's attempt to use bad faith interpretations of election laws to overturn the choice of American voters was thwarted by state officials. Georgia's new law, and bills under consideration in Arizona and elsewhere, attack the barriers that stopped Trump from stealing the election, increasing the chances that a similar effort will succeed in the future.

Trump understands, perhaps instinctively, that rules, procedures, even laws are socially constructed. They're human ideas, not physics, and have power only to the extent that people choose to follow them. If someone breaks the law and no one stops them, their actions are, in

effect, legal. If people in positions of institutional authority ignore the law, or if they lie and apply the law to convenient fictions instead of factual reality, then they effectively remake the law itself.

In Georgia, the crucial figures who followed state law and the norms of American democracy rather than go along with Trump's lies are (1) County election officials, especially in the Atlanta area, who oversaw ballot counts and rejected Team Trump's requests to treat legitimate ballots as questionable; and (2) Georgia Secretary of State Brad Raffensperger, the official in charge of the election, who can be heard resisting Trump's pressure to "find 11,780 votes" on an hour-plus phone call that leaked to the press.

Georgia Republicans have worked to sideline both. Much of the party treats Raffensperger as *persona non grata*, and he faces a Trump-endorsed, Big Lie-embracing primary challenger. And if Raffensperger or another rule-follower holds the position, the new law removes the Secretary as chair of the State Election Board, and makes him a non-voting member.

That provision isn't bad in isolation. Georgia's SecState probably has too much power over elections. In 2018, Secretary of State Brian Kemp purged hundreds of thousands from voter rolls while running for governor, and then won by less than 55,000. That's a conflict of interest that warrants reform.

But this change isn't happening in isolation. It's part of a larger consolidation of power in the state legislature. The new law gives the State Election Board the power to appoint a "superintendent" to take over county election boards. And the state board will now be run by five people, one appointed each by the state house, state senate, entire state assembly, Republican Party, and Democratic Party. Since the Republican Party controls both houses, it'll pick four and Democrats will pick one.

So if the 2024 Republican candidate invents a story of fraud in, say, Fulton County (Georgia's most populous, contains most of Atlanta, relatively high percentage of black residents), the Republican state legislature's handpicked election board could take over the county and appoint someone with the power to treat the lies as real and disqualify thousands of ballots.

Asked in an interview, "If this legislation had been in place in 2020, do you think the state board of elections should have stepped in in Fulton County?," president pro tempore of the Georgia state senate Butch Miller, a co-sponsor of the bill, replied "clearly."

And it's not just 2024. Though Democrats ran a close race for governor in 2018, and won both president and U.S. Senate in 2020, Republicans hold substantial majorities in the Georgia House (103–76) and Senate (34–22). They've controlled both since 2005, and population concentration and gerrymandering will keep the legislature red while the state gets bluer. Now they transferred some power over elections from statewide and county-level officials to themselves.

It's a mechanism for a degree of minority rule.

Election Integrity

Georgia Republicans removed barriers to a Trump-like attempt to overturn a presidential election, and other red states are trying to go further. Republicans in Arizona have proposed empowering the state legislature, rather than voters, to pick presidential electors. I don't know if

this or other proposals will become law, but they might. Or they might create an indirect way to deliver Electoral College votes to the legislature's preferred candidate, like in Georgia.

I don't know if Republicans will use new provisions to overcome voters' will in 2024. It depends on how the election goes and who they nominate. But this much is clear: Republicans reacted to losing the White House in 2020 by lying about the election and trying to overturn it in various undemocratic ways, culminating in a violent attack on Congress, which many of them continue to excuse. They've doubled down on the Big Lie, ostracizing the few Republicans who tell the truth. Now red states are crafting new election laws premised on those lies.

After all that, assurances that Republicans would never abuse their new powers and will always act in good faith are not sufficient.

Yes, Georgia's new law does some good things. And yes, some criticism of it is hyperbolic and inaccurate. But if asked to judge by only those things, setting aside the bad parts of the law and the larger post-election context, those who value American democracy should say no.