COVID-19 and Evictions

A “Tsunami” May Be Coming

Since the COVID-19 pandemic began, more than 40 million Americans have lost their jobs and filed for unemployment. Usually unemployment benefits cover only part of a person’s wages, so the government provided $600 a week in supplemental benefits to help. With those added benefits about to end and the job market and economy still struggling, there are very real fears that a “tsunami of evictions” may occur next month when over 16 million people can’t pay their rent.

Last month, the Legal Services Corporation (LSC), the nation’s largest provider of legal aid funding, hosted a call to discuss the oncoming eviction crisis and how legal service providers can best serve their clients. Matthew Desmond, head of the Eviction Lab and author of Evicted: Poverty & Profit in the American City, spoke at the event about the need for data collection on evictions to better understand the scope of the nation’s housing crisis. He noted that the federal government does not collect data on evictions, even for those living in publicly funded housing.

Panelists from legal aid organizations reported that they are already seeing eviction proceedings rise sharply due to an increasing inability to pay rent. National estimates predict that 20 to 28 million renters are at risk for eviction by September. Many people would already be removed from their homes but for current state and federal moratoria on evictions. However, legal aid organizations reported that some landlords ignored these moratoria or engaged in self-help measures, such as illegal lockouts. Nevada Legal Services reported that in 2019 their office only handled twelve lockout cases; yet from February to June 2020, they accepted more than 800 lockout cases. Even groups protected under the CARES Act, such as those residing in publicly funded housing, have seen an increase in eviction filings, with Legal Services of Northwest Texas reporting that 7% of Houston’s eviction filings are from federally backed housing providers.

As states lift their emergency orders, eviction filings are expected to increase dramatically. Tenants confronted with eviction notices face enormous challenges, especially during this pandemic. Typically, many tenants cannot afford an attorney and are unsure of their rights during an eviction hearing. LSC notes that approximately 90% of tenants have no legal representation in these proceedings, whereas 90% of landlords do. Additionally, many tenants lack internet access for virtual hearings or cannot safely appear in court during the pandemic, meaning that eviction proceedings will increasingly occur without tenants present and often result in default judgments. Legal service providers predict that this
enormous disparity will lead to hundreds of thousands of evictions and newly homeless Americans.

Experts agree that to reduce the evictions expected in the coming months, more funding is needed for public housing and for legal services to help tenants facing eviction proceedings. LSC requested $100 million in emergency federal funds to increase access to legal services, and so far, it received $50 million. LSC is requesting another $50 million in Congress’ next stimulus bill and the ABA fully supports that request. The House has already included the extra $50 million in its stimulus bill (the Heroes Act), but the Senate has not yet addressed the issue.

Besides advocating for emergency LSC funding to help address the looming eviction crisis, the ABA also sent a letter on July 21 urging Congress to prioritize housing stability and safety for people across the country. Government stay at home orders understandably prioritized personal safety over jobs and economic security, but there must be an economic strategy to help those who complied with the orders and are facing financial hardships as a result, whether landlords or tenants, especially now that some COVID-19 relief is ending.

Want to help? Click here to tell your Members of Congress to include more emergency funding for LSC and to prioritize housing stability for their constituents during this pandemic.
August Recess

The perfect time to grow or even start relationships with your Members

With US Senators and Representatives heading home for August Recess, now is the perfect time to reach out to them. During the month, elected officials go home to meet with their constituents and work on local interests. It’s the perfect time to connect with your Members of Congress, discuss current issues of importance to the legal profession, or even follow up on correspondence from ABA Day.

COVID-19 and racial equity have dominated Congress’ attention all year, which will likely continue through the November elections. At the same time, Congress still needs to meet several important deadlines and conduct routine business. Elected officials have even said that they want to hear from their constituents on how to prioritize issues with the remaining time left in the 116th Congress.

August Recess is therefore an excellent time to build upon or even start a relationship with your federal officials.

So, we have put together a few reminders and updates to help you show value to your elected officials:

Ready to advocate on a particular issue?

Great, there are some issues that definitely need your support! Since there are only five months left in this Congress and a lot of competing demands for time and resources, it is helpful to focus on issues already moving in pending legislation. Here are some key issues of interest to the profession on which the ABA is advocating:

1) [Legal Services Corporation emergency funding](https://www.abanet.org/advocacy/legislative/legis acciones.html), especially with evictions looming
2) [Broadband Access for Rural Communities](https://www.abanet.org/advocacy/legislative/legis acciones.html): An Access to Justice Issue
3) [Support for students and attorneys in the Public Service Loan Forgiveness Program](https://www.abanet.org/advocacy/legislative/legis acciones.html)
4) [COVID-19 economic relief for 501(c)(6) trade and professional associations](https://www.abanet.org/advocacy/legislative/legis acciones.html)

The House has already included each of these issues in its COVID-19 relief package that passed on May 12th (H.R. 6800, the Heroes Act). The Senate is expected to release its relief bill this week and negotiations on a final bill are already contentious. We need your help to
ensure these important issues are included in that final bill. Click on the links above to see emails you can send directly from our messaging portal that are guaranteed to make it through congressional firewalls. There are also tweets you can post that will automatically include your Senators’ or Representative’s handle. If you want to call their office, see a phone script before being patched through to their district offices.

**Did you Participate in ABA Day?**

Thank you! You did a great job building on the foundation of your congressional relationship. Whether you reached out over email, social media, phone, or teleconference/videoconference, you established or renewed an ongoing collaboration. Having allowed for three months to pass, now is a good time to circle back on the issues you discussed. We recommend doing this by email, so we have some form emails you can edit if you reached out digitally or met over teleconference. If you would like to take it a step further and request a teleconference meeting to discuss your issues, we are happy to help. Start by sending a personalized version of this email requesting a meeting and reach out to us, so we can supply you with the latest information and resources.

**Want to Build or Start Your Relationship with Elected Officials?**

August Recess is a unique time during the election cycle when most federal officials are both campaigning and making policy at the same time. That means as issue matter experts and constituents, elected officials are actively seeking your perspectives to form their strategy.

If you have an existing relationship, reach out to your contacts to let them know you are available to discuss issues surrounding the legal profession; especially issues surrounding your specialty.

If you are looking to start a relationship with your Senators or Representative, August is the perfect time for that too. They are looking for constituents of all levels of expertise to align themselves with during the coming months. Reach out to their staffs and introduce yourself. Congressional staffers are the issue matter experts who inform the elected officials on matters of interest to the legal profession, and they have the ears and respect of their bosses. Offer to help with issues you are familiar with and send them some information we have in our toolkit to establish credibility. We can help you grow from there.

No matter what you do, we want to work with you to accomplish things as part of the collective voice of the legal profession. If you meet with someone, let us know by emailing us here, so our lobbying team can mention it during the next meeting they have with that office.
For more information and resources, please see the resources we have compiled for you in the ABA August Recess Toolkit. Also please feel free to reach out with any questions directly to the GAO staff.
Unpaid Court Fees and Fines

License suspensions can't be the answer

Matt Holland works the night shift at Denny’s, where he is picked up at 1:00am by his wife and two children – ages six and eight. Before Denny’s, Matt enjoyed working as a plumber where he earned more money and worked normal hours. However, being a plumber required him to drive to his jobs, which he can’t do anymore. Matt is one of nearly 11 million people across the country whose license has been suspended as a result of unpaid court fees and fines, often for reasons completely unrelated to driving offenses.

Every day, courts across the United States impose myriad fines and fees on individuals who have been charged with criminal offenses or civil infractions. Fines are monetary charges intended as punishment for wrongdoing, while fees are charges imposed for the purpose of raising revenue or recouping costs. In some instances, the fees imposed relate directly to the person’s use of the justice system, e.g., probation fees or public defender fees. In other instances, the fee is a means of raising funds for an unrelated program or priority.

Suspending licenses to punish someone unable to pay fines or fees is counterproductive. A driver’s license suspension often renders the person unable to work, further impeding the ability to pay their fines and fees, and unable to take care of family obligations like childcare or food shopping. Frequently, the individual drives despite the suspension, which can result in other charges, incurring additional fines and fees and creating a vicious cycle of mounting debt and prolonged involvement with the legal system. More limited access to public transportation during COVID-19 has exacerbated the problem, making travel even more difficult for those with suspended licenses.

Most drivers’ license suspensions happen in urban areas, but low-income drivers in rural areas have their licenses suspended at some of the highest rates in the country. In several rural counties, 25% of licenses are suspended. These suspensions also disproportionately affect people of color. A federal civil rights investigation into the impetus of the 2014 Ferguson Riots showed that license suspensions created additional friction within the community.

To help ensure that no individual is punished in our courts solely for being poor, the ABA adopted Ten Guidelines on Court Fines and Fees as policy in 2018. Guideline Three says, “A person’s inability to pay a fine, fee or restitution should never result in incarceration or other disproportionate sanctions,” including suspending driver’s licenses. The guidelines further explain the cycle of poverty that is purported by continuing to impose fees, fines and suspensions.
On July 2, Sens. Chris Coons (D-DE) and Roger Wicker (R-MS) introduced the Driving for Opportunity Act, S. 4186, to create incentives for states to stop debt-based driver’s license suspensions for non-payment of court fines and fees. This act would repeal the federal mandate to suspend driver’s licenses for certain non-driving related offenses and authorize targeted grants to states that repeal laws that suspend licenses for unpaid fees. It is supported by a broad coalition of groups spanning the political and professional spectrum, including civil rights and civil liberties advocates, law enforcement officers, prosecutors, and defense lawyers.

Fortunately, many states are already moving to change their laws. Since 2018, Montana, Virginia, West Virginia, Idaho, and Mississippi all have ended driver’s license suspensions for unpaid fines and fees. California, Wyoming, and Kentucky also do not suspend licenses for unpaid fines and fees, and many other states are considering related bills. Suspending drivers’ licenses for unpaid fines and fees is bad for the economy, jeopardizes public safety, takes up law enforcement officers’ valuable time, and disproportionately harms rural communities and minorities. The Driving for Opportunity Act is one more step towards ending debt-based driver’s license suspensions and the criminalization of poverty.

For the most up-to-date information on this issue, follow us on Twitter @ABAGrassroots.
U.S Begins Pullout from World Health Organization

Balancing Health and Accountability

On July 6, 2020, the United States notified the United Nations (U.N.) Secretary General that it intends to formally withdraw as a member of the World Health Organization (WHO), thereby starting the one-year notice requirement before the withdrawal becomes effective in July 2021. President Trump intends to complete this process if he is reelected this fall “unless they get their act together”, but former Vice President Biden said he would reverse that decision on his first day in office if he is elected.

So, what is the WHO, and so what if the United States withdraws from it?

The WHO is a specialized agency of the United Nations, established by a treaty that is separate from the U.N. Charter. It is composed of representatives from all 194 member states and receives funds from assessed dues and voluntary contributions. In its 1948 Constitution, the objective of the WHO is the attainment by all people of the highest possible level of health. One of the stated functions of the organization is “to act as the directing and coordinating authority on international health work”, and it has the power to issue binding regulations on sanitary requirements and other procedures designed to prevent the international spread of disease.

During the last seven decades, the WHO has been successful on numerous fronts, including eradicating smallpox from the world; expanding immunization programs against diseases like tetanus, whooping cough, measles, polio and tuberculosis; coordinating control and treatment of the HIV/AIDS pandemic; helping to develop an Ebola vaccine; and providing emergency and humanitarian relief in cooperation with other bodies in the U.N. system in places like Somalia, former Yugoslavia, and Rwanda.

When COVID-19 hit the United States earlier this year, the Trump Administration questioned China’s reporting of the outbreak to the WHO and later called for reforms to the process. When no remedial action was taken, the Administration criticized the organization for its handling of the coronavirus and accused it of succumbing to Chinese influence, which prompted the withdrawal decision.

If the United States withdraws from the WHO, it will likely have less influence in the global health arena. Lack of access to the significant funding historically provided by the U.S. may also jeopardize the WHO’s ability to respond to future emergencies.
On July 24th, the House passed the fiscal year 2021 State, Foreign Operations, and Related Programs appropriations bill in a package with three other appropriations bills (H.R. 7608) that provides robust funding for the WHO and prohibits any funding from being used to withdraw from it, potentially setting up a dispute with the Senate and/or White House.

The ABA has policy recommending strong United States support to the WHO and to the more effective implementation of public health improvements through increased WHO standard setting and development of elements of model legislation, regulations and enforcement measures, adaptable to countries’ individual needs.

Want to know more? Follow us @ABAggrassroots.
Voting in an Era of Crisis

by Jason A. Abel

The legal wrangling over whether—and how—to conduct the April 7, 2020, election in Wisconsin underscores a deeper battle shaping up for November’s general election, specifically how the franchise can be guaranteed in an era of a crisis. The deadly pandemic sweeping the globe has killed over 100,000 people in the United States (and over 240,000 globally) as of the beginning of June, required unprecedented levels of self-quarantine, plunged global markets, and created uncertainty and fear. There is still time, however, to prevent COVID-19 from claiming another victim: our American democracy.

The pictures will remain seared into our collective memories: senior citizens standing six feet apart with masks, sometimes for hours, and young voters holding up protest signs while in line. A video of voters in a predominantly African American community waiting. In masks. In hail and horrible weather. All of this to exercise the fundamental—and precious—right to vote.

The voter suppression experienced in April did not begin—and will not end—with the Wisconsin election. As if it is not enough that a pandemic could make in-person voting hazardous and an impossibility to some, federal and state policymakers using the pandemic to further restrict the vote is unconscionable. With the November general election approaching, it is vital to understand both the challenges that we face as a nation and the options that lawmakers are considering to ensure that the franchise is available to all eligible to exercise their right to vote.

Voting Post-Shelby

In Wisconsin, stories quickly circulated that due to COVID-19, the amount of polling places in Milwaukee—which is largely Democratic and contains a sizable African American community—dropped from 180 to just 5. It is logical to deduce that reducing the amount of polling places increases the amount of time it would take to vote. In other words, longer lines.

Yet, while much of the nation struggled with understanding why this would happen, observers of elections saw a familiar pattern. For decades prior to 2009, under the Voting Rights Act of 1965, certain covered jurisdictions were required to preclear certain changes to their elections with the Department of Justice. This preclearance (under Section 5) was a cornerstone of the act.
Yet, the 5–4 decision in *Shelby County v. Holder* in 2009 rendered this preclearance basically useless after holding that the formula to determine which jurisdictions were covered was unconstitutional. The U.S. Supreme Court questioned the need for such a federal intrusion in states’ activities. Part of the Court’s rationale was that the country had moved past the era of Jim Crow and past the era of voter suppression, and therefore the formula needed to be updated. Refuting the majority’s belief that preclearance would no longer be necessary, Justice Ruth Bader Ginsburg stated in her dissent: “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”

As a result of jurisdictions (state and local) no longer being required to preclear election and voting related changes, voters saw massive—and immediate—changes. A September 2019 study by the Leadership Conference on Civil and Human Rights found that from 2012 to 2018 there were 1,688 polling place closures in the jurisdictions previously covered by Section 5 of the act.

But polling place closures were not the only restrictive measures jurisdictions implemented since *Shelby*: Photo ID and proof of citizenship requirements, reduction of early voting periods, voter registration hurdles, and voter purges all occurred with greater frequency and without a federal check. In her powerful book, *One Person, No Vote*, Carol Anderson documents both historical and current disenfranchisement in great detail (including prior efforts to restrict the right to vote in Wisconsin), and places the state of voting in America in 2018 in context, stating plainly: “In short, we’re in trouble.”

And that was before COVID-19.

**Election(s) in a time of Pandemic**

In January and February 2020, when the democratic primary process was in full swing, the COVID-19 pandemic began to spread. The virus’s impact on America has been brutal, and its disproportionate impact on African Americans and communities of color has further exposed racial inequities in our health system. For instance, as of April 21, official numbers from Washington, D.C., revealed that 80 percent of coronavirus deaths were African Americans. That figure is horribly out of proportion to the population numbers, where African Americans make up 46 percent of D.C. residents.

An additional consequence of COVID-19 has been how both voter registration and elections are conducted throughout the country. Voter registration drives have been significantly disrupted. Registration locations, such as state Departments of Motor Vehicles (allowed under the National Voter Registration Act, or the “Motor Voter Act”), are closed, and large gatherings that prove to be good opportunities for third-party groups to register voters just do not exist in this period of “social distancing.” And while online voter registration does allow for an additional possibility, accessibility to that option is subject to socioeconomic
factors and can prove to be difficult for those with disabilities or language barriers. It has been reported that as a result of the overall lack of registration options, millions could be prevented from registering and therefore voting in November’s election.

While many states decided to postpone their elections citing the public health risk, other states, most notably Wisconsin, went ahead with voting. Looking back, the risks were not overblown or exaggerated. On April 13, it was reported that a poll worker in Chicago during Illinois’s March 17 election died of the coronavirus. Intense partisan battles preceded the April 7 Wisconsin election with both the date and the method of voting in question.

One lawsuit was related to the Wisconsin governor’s authority to postpone the election, which the Wisconsin Supreme Court held did not exist. The other track was related to the distribution and acceptance of absentee ballots. Once it became clear that voting in person could prove to be harmful to public health, many Wisconsin residents requested absentee ballots. Yet, many did not receive those ballots in a timely fashion (or at all), and for those who did, the requirement that they be returned by Election Day placed a heavy burden on voters.

In a preliminary injunction by the Democratic National Committee, the district court crafted a remedy that allowed for voters to request absentee ballots one day, from April 2 to April 3. The court also mandated that those ballots must be accepted if received by election officials by April 13 at 4:00 p.m., regardless of the date of the postmark. The Republican National Committee appealed to the Court of Appeals for the Seventh Circuit, which declined to change the district court’s deadline. It then sought a partial stay of the preliminary injunction from the U.S. Supreme Court.

In a brief, yet contentious 5–4 decision, the Court rejected the ability for voters to mail back their ballots after April 7. The majority, in a per curiam opinion, labeled the question before it as a “narrow, technical question about the absentee process” and claimed that allowing voters to return ballots for up to six days after Election Day “fundamentally alters the nature of the election.” After spending a significant amount of time attacking the dissent, the Court then ultimately stated that only those ballots postmarked by April 7 and received by April 13 at 4:00 p.m. (or hand-delivered by April 7 at 8:00 p.m.) would be counted.

Justice Ginsburg, in dissent, acknowledged the public health crisis and the burden that it placed on election officials in Wisconsin. She stated that “Rising concern about the COVID-19 pandemic has caused a late surge in absentee-ballot requests.” The Court’s suggestion that the current situation is not “substantially different” from “an ordinary election” “boggles the mind.” The dissent, analogizing to the fact that voters in line when the polls closed still had the ability to vote even after Election Day has ended, argued that those voters in line to receive an absentee ballot after Election Day has ended should similarly still have the ability to vote. “While I do not doubt the good faith of my colleagues,” Justice
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Ginsburg wrote, “the Court’s order, I fear, will result in massive disenfranchisement. A voter cannot deliver for postmarking a ballot she has not yet received.”

The Court’s opinion created an outcry. Professor Rick Hasen, the Chancellor’s Professor of Law and Political Science at the University of California, Irvine, called the majority’s opinion “sloppy” and called the “cavalier nature” of the opinion “troubling” in an April 10 ElectionLawBlog post, and Adam Liptak of the *New York Times* wrote a piece entitled “Rulings on Wisconsin Election Raise Questions About Judicial Partisanship.” Sherrilyn Ifill, director-counsel of the NAACP Legal Defense and Educational Fund, Inc., was quoted in the *National Law Journal* as saying: “It is unconscionable. It is among the most cynical decisions I have read from the Court—devoid of even the pretense of engaging with the reality that this decision will mean one of two things for many WI voters: either they will risk their health & lives to vote, or they will be disenfranchised.” Others became more concerned about the role of the Supreme Court on election issues in the future. In the *Atlantic*, University of Michigan Professor of Law Leah Litman wrote that “the Court’s decision is an ominous harbinger for what the Court might allow in November in the general election.”

A sad postscript was revealed on April 21, when NBC News reported that numerous coronavirus cases were linked to in-person voting. Six voters and one poll worker in Milwaukee all “appear to have contracted the coronavirus through activities related to the April 7 election in Wisconsin,” Milwaukee’s health commissioner Jeanette Kowalik said. Later reports increased this number to 19 cases.

**Preventing Wisconsin from Happening Again**

Wisconsin is one of 34 states (plus the District of Columbia) that do not require an excuse to vote absentee, according to information gathered by the National Conference of State Legislatures. While that may seem like it would cover a significant amount of the population, just because a state has a guaranteed no-excuse absentee ballot procedure does not mean there aren’t restrictions that could make the process difficult for many.

Additionally, five states—Colorado, Hawaii, Oregon, Utah, and Washington—are considered “universal vote-by-mail” states, meaning their entire elections are conducted through mail-in ballots. Generally, these states are also referred to as “vote at home” states because many drop their ballots off at a designated secure center as opposed to dropping them in the mail. One of these universal vote-by-mail/vote-at-home states is Colorado. Recently, former Governor John Hickenlooper, in the *Washington Post*, described the process that has been in place for six years, including its bipartisan support. In Colorado, each eligible voter receives a ballot around three weeks before Election Day and then can mail it back or drop it off at a secure center. Unlike Oregon, which conducts its election completely by mail, Colorado (and Washington) still allow voters to vote on Election Day if they surrender the vote-at-home ballots.
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States that utilize universal vote-by-mail, however, are in the significant minority. Other states that have an absentee ballot process can generally be divided into those that require voters to provide an excuse to vote absentee and those that do not. Already, we have seen two states—New Hampshire and New York—attempt to loosen their “excuse” requirements by expressly providing for absentee ballots for anyone eligible due to COVID-19. At bare minimum, other states should follow.

Moving all states to a “no-excuse” absentee balloting process for the November election would smooth the voting process. This would not be inexpensive or easy, but it is a necessity. In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which became law on March 27, 2020, Congress appropriated $400 million to the states that could be used to implement a vote-by-mail process. Many experts recognize that while this money will be helpful, at least $2 billion will be required to fully fund no-excuse absentee voting in all states.

A vote-by-mail process for the 2020 general election, which would build off a no-excuse absentee ballot system, would still need significant guardrails to ensure the franchise is available to all eligible voters. Applications should be proactively provided by the state, and online applications should be made available. Postage for application return and ballot return should be paid for by the state and not by the voter. A robust tracking system needs to be implemented so voters and state officials are able to ensure that the ballots are sent and returned without interference, and that such votes are counted.

Additionally, requirements that may currently be included in states’ absentee ballot processing should be reformed to favor the voters during these difficult times. For instance, states that require notary or witness requirements simply do not work in an era of social distancing and self-quarantining. Certain identification and signature match requirements may lead to disenfranchisement if there is no viable way to cure any alleged discrepancies.

One of the biggest steps to ensure voter access is a requirement that any ballot postmarked by Election Day will be counted, regardless of the day it is received by the local jurisdiction. States that require receipt of ballots by Election Day have the tendency to severely disenfranchise voters, as many factors outside voters’ control can delay and prevent the ballot from being returned by that day. For instance, a backlog in processing absentee ballot delivery or stress on United States Postal Service (USPS) resources could prevent a ballot from being counted when the voter did everything correctly. In the Supreme Court’s opinion in RNC v. DNC, the Court appeared to endorse the position that any ballot postmarked by Election Day must be counted.

As mentioned above, on the federal level, there have been congressional efforts to both increase funding for states (to at least that $2 billion amount), and to place mandates on these states to implement some of these changes. For instance, Senators Amy Klobuchar (D-MN) and Ron Wyden (D-OR) introduced the Natural Disaster Emergency Ballot Act of
2020, and Senator Kamala Harris (D-CA) announced the VoteSafe Act. On the House side, Speaker Nancy Pelosi (D-CA) proposed $4 billion in funding and included numerous vote-by-mail-related measures in her version of the third phase of COVID-19 relief. In addition, members of Congress were seeking to remove the 20 percent match requirement placed on the states in order to access the $400 million in the CARES Act.

At the time of this article’s publication, Congress was debating the fourth phase of COVID-19 relief and the final outcome of both federal funding and any federal mandates were yet to be determined. Part of this debate includes efforts to make sure the USPS has the resources it needs to not just operate, but to handle increased usage around election season.

While considering the various efforts to increase vote-by-mail access, policymakers must recognize that vote-by-mail is not the entire solution for all communities. On April 13, the Leadership Conference on Civil and Human Rights wrote to Congress explaining that while Congress should provide at least $4 billion to prepare for the 2020 elections, additional measures should also be implemented, including expanded registration options, extended early in-person voting, voter education, and “prohibition of polling place adjustments that disproportionately impact vulnerable populations.” The Leadership Conference explained that vote-by-mail is “necessary but insufficient alone to safeguard our election” and discussed some of the obstacles and limitations of vote-by-mail for Native American voters, communities of color, and people with disabilities.

Despite the various arguments made that vote-by-mail would lead to a partisan advantage, studies have proven this to be incorrect. Recently, Stanford University’s Democracy & Polarization Lab published a study entitled “The Neutral Partisan Effects of Vote-by-Mail: Evidence from County-Level Rollouts.” The study concluded that vote-by-mail does not appear to either “affect either party’s share of turnout” or “increase either party’s voter share.”

Finally, those who have raised the specter of voter fraud to cast doubt on the legitimacy of elections create fear in the mind of the American public, or to support various restrictions on voter access have taken the same approach to vote-by-mail. Instances of voter fraud, including vote-by-mail fraud, are “exceedingly rare” according to experts, including Amber McReynolds and Charles Stewart III, who describe that the occurrences amount to 0.00006 percent of total votes cast by mail. Washington Secretary of State Kim Wyman—a Republican—has publicly supported her state’s vote-by-mail system, and on an April 10 call with bipartisan election officials, and according to an AP report, stated that it is “‘disappointing when anyone in leadership’ makes fraud claims. . . . ‘When it happens, the public loses confidence in the foundational pillar of our system.’”
Protecting the Health of Our Democracy

In 2020, our public health has come under attack by COVID-19. At minimum, the novel coronavirus has disrupted our daily life, and, in some cases, it may have taken a friend, colleague, or loved one. The pandemic has also taken a toll on our democracy—forcing elections to change dates and forms. Ben Franklin famously said, “a republic, if you can keep it.” For us to keep our republic, we must keep our democracy healthy. And the health of our democracy should not come at the expense of the health of our people. Steps to guarantee the franchise—such as nationwide vote-by-mail with the correct safeguards—could allow us to protect both the health of our fellow citizens and the overall health of our democracy.

The opinions expressed here do not reflect the opinions of Steptoe & Johnson LLP or its clients.